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A Study of the Processes, Methods and Techniques used in Negotiated or "Best Value" Procurements for Construction Services

by

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Abstract of
A Study of the Processes, Methods and Techniques used in Negotiated or "Best Value" Procurement of Construction Services

An important part of the construction process is awarding the contract to perform the construction in a timely manner to a qualified contractor. The owner must choose a delivery method and a selection method. The four basic delivery methods are: Traditional Design-Bid-Build, Construction Management, Design-Build, and Design-Build-Operate-Transfer and the two most commonly used selection methods are Invitation to Bid and Request for Proposal (Source Selection). The method that will give the owner the most flexibility in selecting the most qualified contractor is the Request for Proposal or Source Selection Process.

There are several basic steps in the Source Selection Process that ultimately lead to the selection of the "Best Value" Offeror. In the private industry the steps are left to the discretion of the individual owners. For Government Agencies there are applicable rules and regulations that apply and must be followed. In either case, the basic framework of the process is the same for both private and Government "owners". The primary difference is that private owners can enter into contractual relationships in any matter they choose as long as it is not fraudulent and therefore do not run the risk of the process being stopped by a protest. On the other hand, the Government runs the risk of the process being stopped by a protest and must follow all the prescribed rules, regulations, and procedures to mitigate this risk.

The most important step in the Source Selection Process is developing Evaluation Factors and Subfactors because this will ultimately determine the ease and cost of proposal preparation for the offerors and the ease of evaluating proposals for the evaluation team. The second most important step is the consistent evaluation of the proposals received. No matter how complex the evaluation factors are if the evaluators evaluate the proposals consistently and adequately document their findings the probability of a successful protest will be significantly reduced.

The Source Selection Process is the best available process to get the "best value" possible for any owner organization. It helps force contractors who want to continue to win contracts to care about their performance ratings on projects, helps reduce the adversarial relationships between the owner and the contractor, and in the end results in an overall higher quality project that is much easier to administer.

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PART I
Objective and General Process

1.0 Objective of the Report

The objective of this report is to describe and analyze the process, methods, and techniques owners use to select contractors in Negotiated or "Best Value" procurements for construction services.

The construction process from concept to project completion has many steps. Often times once the decision to go ahead with a project is made the time line for getting the project designed, awarded, and constructed is critical and can have significant economic impact if construction completion is not done by deadlines and/or within the most reasonable time possible. For example, I was involved in two school projects that had critical construction completion times and therefore, it was crucial they were awarded on time. The first project was the design build construction of a new school that had to be completed before the lease of the existing school expired, and the second project was a school renovation project where a significant portion of the work had to be done during the summer break. Another obvious example is for every day of delay in the completion of a hotel or apartment complex is significant in terms of lost revenue.

One of the early phases of the construction process that can impact the time cycle and subsequent success (measured in quality and timeliness) is awarding the contract in a timely manner to a qualified contractor. This report will focus on the major steps in the selection by briefly describing each major step, comparing different agencies/organizations methods and procedure, reviewing case studies, and interviewing contractors and owner personnel.

Additionally, the report will focus mostly on Government selection processes because it is much more prone to protests that can result in costly legal fees and considerably delay contract award and subsequent project completion. As per Robert Dorsey in CASE STUDIES IN BUILDING DESIGN & CONSTRUCTION, "private owners can select contractors and establish contractual relationships in almost any manner, short of fraud" (Dorsey, 1999; pg. 46). Public owners typically fall under strict regulations and procedures and when a selection decision does not appear fair, dissatisfied contractors can file a bid protest that will stop the entire acquisition process until the protest is resolved.

2.0 General Pre-Award Process and Source Selection

2.1 Selecting a Method to Choose a Contractor

Once the decision is made to pursue the project the owner must decide on the delivery system to use. There are four basic delivery systems with variations within each major system: Traditional Design-Bid-Build, Construction Management, Design-Build, and Design-Build-Operate-Transfer. Also, at this point the owner should determine the selection method that they intend to use. There are two basic methods commonly used in the United States: Invitation to Bid (IFB) and Request for Proposal (RFP) i.e. Source Selection. The invitation to bid is typically based on price and the lowest bidder receives the award provided that they can show that they have adequate financial resources to get the project done. In a request for proposal the owner develops guidelines and/or evaluation factors and asks the contractor to submit a proposal for completing the project based on the guidelines in the owner's request for proposal. The owner then chooses a contractor based on the "best value" proposal received.

Until recently invitation to bid has been the most popular method for procuring construction services. However, taking the lowest bid does not necessarily result in the lowest final cost and

it does not typically give incentives for high quality. Therefore, Requests for Proposals have gained much wider use in the United States for example, the Naval Facilities Engineering Command (NAVFAC), awarded 35% of its contracts using RFP's in fiscal year 1996, 40% in FY 1997, and is projected to reach 80% by the end of the FY 2000 (NFCTC, 1999).

2.2 The General Source Selection Process

Once an owner chooses to use Source Selection procedures then the process is widely dependent on the owner's own internal policies and in the case of Federal and State "Owners" the laws and policies that apply to the process. Government "Owners" must follow stringent guidelines and almost always maintain "Full and Open Competition", private owners have great latitude in determining how they will select contractors. However, the major steps in the process are similar for both Government and Private owners.

The basic premise is that the owner develops a request for proposal (RFP) and then sends the RFP out to contractors asking them to submit proposals. The request for proposal can be as simple as a statement of work and some general guidelines on how to answer the proposal to detailed plans and specifications with very detailed instructions on how to answer the proposal. Often times there will be a request for two submissions, the first proposal submitted will be to pre-qualify contractors so the field of eligible contractors is narrowed down for the final and more detailed proposal submissions. The detail and complexity of the RFP will depend on the project and contract delivery method i.e. Design Build, Design-"Bid"-Build, and/or Construction Management, and the rules and policies of the owner and/or government organization that is "buying" the project.

The owner should develop the RFP with specific objectives and/or important points that they want the contractor to address that will help the owner discriminate between proposals.

Typically, price is a factor, and then the request for proposal can specify other non-price related items ranging from site drawings and structural plans to Past Performance and/or a Plan to Manage the Project. The factors should relate to the important aspects of the project and/or show the contractor is capable, and how capable, he/she is to perform the project.

The number of contractors the RFP is sent to depend on the owner. In the case of some organizations, such as the Walt Disney World Company, the requests are sent out to a selected group of contractors who have already pre-qualified with Disney through a pre-qualification process. For specific projects Disney sends out a request for proposal to 5 or 6 contractors on the pre-qualified list based on contractor skill and Disney's perception of the workload of the contractor (Greenwood, Lee). In the case of the Federal Government the request has to be sent to the Commerce Business Daily to be publicly published and the public is invited to submit a proposal. The Florida Department of Transportation also uses an initial "pre-qualification process" but the process is limited to the contractors assets and does not address other factors such as Past Performance, personnel qualifications, etc. In fact they pre-qualify about 400 contractors per year and when a contract is ready for "bid" letters of interest are sent to the list of contractors on the pre-qualified list (Moore, Juanita).

Once Proposals are received, the owner and/or owners representatives meet, review the proposals, and ideally select the contractor that will provide the "best value" performance.

3.0 Definitions

Competitive Range. All proposals that the contracting officer determines to be the most highly rated based on the cost and noncost evaluation factors stated in the solicitation.

Evaluation Factors and Subfactors. Descriptions of those aspects of a proposal that will be evaluated quantitatively or qualitatively to assess which proposal can best meet the Government's requirements as described in the solicitation.

Evaluation Standards (also called evaluation criteria). A baseline level of merit or acceptability used for measuring how well or whether an offeror's response meets the solicitation's requirements with respect to an evaluation factor or subfactor.

Rating. The application of a scale of words, colors, or numbers, used in conjunction with narrative, to denote the degree to which the proposal has met the standard for a non-cost factor.

Source Selection/Evaluation Plan. The document that explains how proposals are to be solicited and evaluated to make the selection decision. It is the Government's plan for how it intends to acquire its needs.

Source Selection Process. The process of soliciting and evaluating proposals for award in a competitively negotiated environment.

Trade Offs. The process of choosing something that is a balance between price and technical merit.

Part II
Analysis and Description of the Major Steps in a Source Selection

4.0 Introduction

The Source Selection Process consists of several basic steps that ultimately result in an award to the "Best Value" Offeror. In the private industry the steps are left to the discretion of the individual owners. For Government Procurements there are applicable rules and regulations that apply and must be followed throughout the process. In either case, the basic framework of the process is the same for both private and Government organizations.

The following will primarily focus on Government source selections because the rules and regulations must be followed. If the process is not followed the end result could be a protest that could result in a complete work stoppage and much lost time. As stated earlier Private industry does not run this risk.

5.0 The Source Selection Team

Once a decision is made to use the Source Selection process a team must be established to help develop the Request for Proposal (RFP), evaluate the proposals, and recommend and select the best value contractor. It is very important to form the team early in the process. The Source Selection Team members should have input into the selection factors. The level of involvement of the Team members and the complexity of the team organization is usually determined based on the aspects of the project itself (AMC 715-3, 1998; NFCTC, 1998).

The Team can be very structured and have many groups and subgroups to simply one or two people evaluating the proposals. AMC Pamphlet 715-3, CONTRACTING FOR BEST VALUE, A BEST PRACTICES GUIDE TO SOURCE SELECTION, has an example of different source

selection teams. Figure 1 is an example of a complex Source Selection Team. Figure 2 is an example of a simple evaluation team.

Source Selection
Complex Source Selection Team

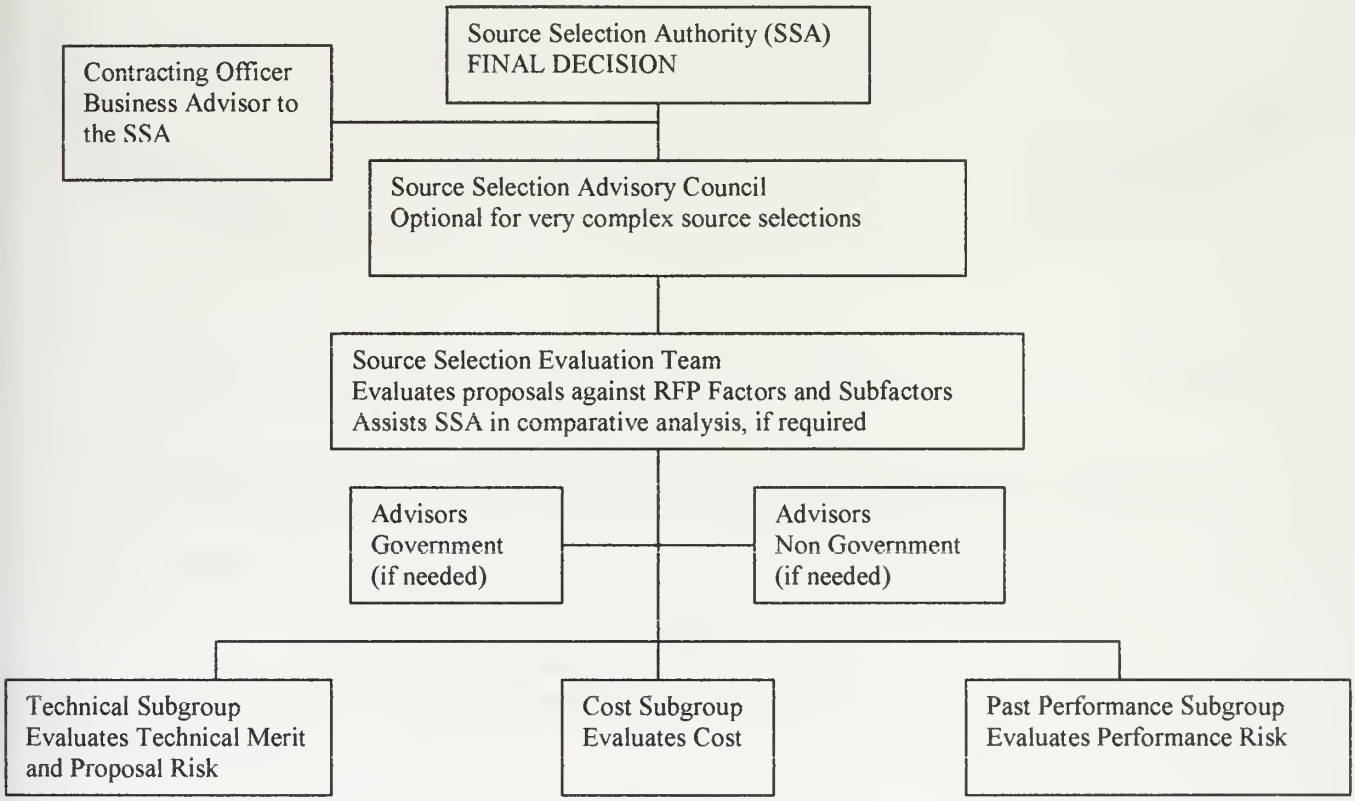

Figure 1

Source Selection
Non-Complex Source Selection Team

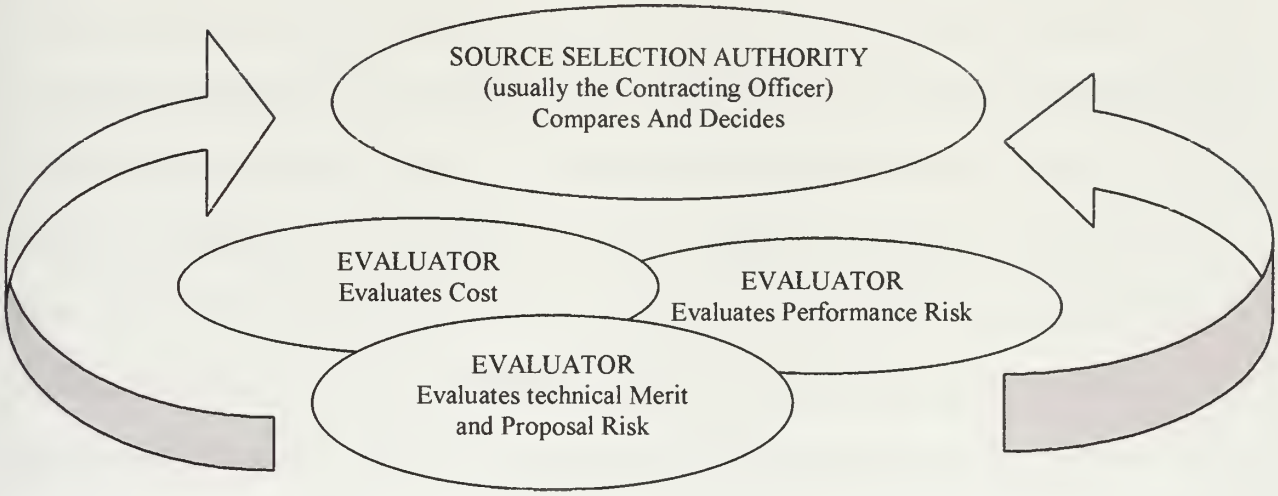

Figure 2

The Naval Facilities Engineering Command has a typical Source Selection organization as shown in figure 3 (NFCTC, 1998).

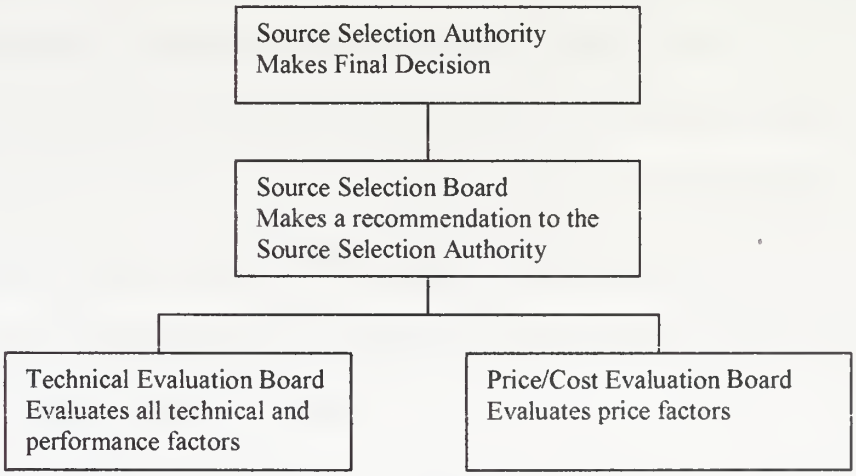

Figure 3

All of the above organizations are Department of Defense Organizations however committees and selection groups are formed for other organizations as well.

All of the organizations I talked to included the "end-user" in the selection process. According to J.T. McAferty from the University of Florida's Planning Department they short list their consultants, (A&E and Construction Managers), and after the short list the specific Department the facility is being constructed for within the University has a very significant role in making the final selection. Also, Lee Greenwood stated that they consult with the construction management branch and the "end-user" to choose the contractor. It is my experience in the Navy that many of the "end-users" are not involved in the detailed review of proposals but rather they receive briefs from the chairman of the Technical and/or Source Selection Board. However, this very much depends on the customer, type of project, and importance of the project.

It is important to maintain the integrity of the team throughout the process. Once evaluations are started major changes to the team can be detrimental to the selection. Obvious changes can and should occur if a conflict of interest is discovered or other unforeseen circumstances arise among individual members. For example, on one selection I was involved with, after proposals were received and the technical evaluation board met and started reviewing proposals one of the technical board members noticed that his wife's aunt held an executive position on one of the offeror's board of directors. The technical board member notified the contracting officer and was appropriately removed from the technical evaluation board. In this case there were still several remaining members on the technical evaluation board and the board successfully completed the evaluations.

However, care should be taken if major changes in the technical evaluation boards membership or procedures are changed as shown in the following case study.

5.1 Case Study United International Investigative Services vs. United States

In *United International Investigative Services vs. United States, 41 Fed. Cl. 312 (1998)* the Court ruled in favor of the plaintiff when only 2 of the 6 members were called back to evaluate the proposals. The Contracting Officer felt that the Technical evaluations were flawed and directed the Technical Evaluation Board Chairman to revisit the proposals. The TEB Chairman directed two of the six TEB members to review the proposals and validate the scores. However, the record is not clear whether one or two of the TEB members actually did this. Whatever, the case the TEB member(s) who revisited the proposal made significant changes in the scoring. The court ruled in favor of the plaintiff because the court felt in part that

> The group discussion, as demonstrated above, was necessary in order to ventilate the evaluators' opinions regarding each proposal. During these discussions, evaluators could have explained their individual reasons for ascribing a score to a particular proposal. Moreover, the TEB, as a group, would then have been able to arrive at a consensus regarding that particular aspect of an offeror's proposal.
>
> Although minor irregularities or errors in the procurement process are not sufficient grounds to warrant judicial intrusion to overturn a procurement decision, ***Grumman Data Sys. Corp. v. Dalton***, 88 F.3d 990, 1000 (Fed. Cir. 1996), the violation in this case was not minor. Rather, the violation described above deprived plaintiff of the opportunity to have its proposal considered fairly and honestly. Thus, the decision to have two evaluators circumvent the consensus and discussion requirements of the Technical Evaluation merits judicial intrusion.

6.0 Source Selection Approach

Once the decision is made to do a Source Selection the type of approach to use must be determined. There are several types of approaches and some examples of different approaches are described below:

6.1 Pre-qualification - Submit Proposals

In this approach the owner asks contractors to submit a pre-qualification proposal. The pre-qualification proposal usually only asks for general qualifications, past performance on similar

projects, and other company specific factors. Then the owner pre-qualifies usually three to five of the original offerors. The contractors who are pre-qualified will then get sent the full request for proposal including project specific evaluation criteria.

This approach is usually more applicable to complex acquisitions, design/build type projects, and/or simpler acquisitions when there is an expectation that an excessive number of proposals will be received.

The advantages to this are:

a. It reduces the number of "complex" or detailed proposals that the owner has to evaluate and makes selection easier.

b. It reduces the number of contractors who are submitting expensive proposals and eliminates contractors who would not have a very good chance at getting an award before they waste too many resources developing a proposal.

The disadvantages are:

a. It adds another step in the process and perhaps more time in the selection process.

b. For simple projects it may not be appropriate.

6.2 Submit Proposals

The owner develops specific criteria and asks contractors to submit proposals.

The advantages are:

a. It eliminates a step and can be done in one evaluation phase and therefore in some cases can be done faster than the pre-qualification method.

The disadvantages are:

a. It can result in getting an excessive number of proposals and make it very difficult for evaluating the best value proposal.

b. It can result in too many contractors investing resources in developing a proposal that they have no chance to a very slim chance of winning.

6.3 Maintain List of Pre-qualified Companies ask for proposals

Some private companies maintain a list of pre-qualified contractors. For example, the Walt Disney World Corporation maintains a database of contractors who have been pre-qualified to do work for them. The contractors must request to get on the list and then once they are approved to go on the list Disney will consider them for projects of the appropriate size and/or trade that the contractor is qualified to perform. For specific projects Disney invites 5 to 6 companies to submit proposals on the project from their pre-qualified list of contractors (Greenwood, Lee). For Federal projects a list of pre-qualified contractors such as Disney maintains would not be in compliance with 10 U.S.C. 2304 and 41 U.S.C. 253, which requires Federal Agencies to Maintain Full and Open Competition. Therefore, Federal Agencies would not be allowed to do this unless under very specific circumstances.

The advantages to this are:

a. Build a working relationship with contractors who know that if they perform well they will have a good chance for follow on work.

The disadvantage is:

a. May eliminate very qualified contractors who are not pre-qualified.

6.4 Lowest Price Technically Acceptable

This method is most likely a Government unique process. It is defined in the Federal Acquisition Regulation FAR Part 15.101-2. It is a process where contractors are asked to submit price and a technical proposal and the evaluator's rate the technical proposal as either pass or fail. It is used when the best value is expected from the lowest price, technically acceptable proposal.

The advantages is:

a. It is much easier to evaluate proposals and therefore can result in a faster award.

The disadvantages is:

a. It does not allow for trade offs. A much more qualified contractor may have submitted a proposal for just slightly more money than a much less qualified contractor and not get the award

   For example, I was involved in a $500,000 warehouse/cold storage renovation project using this method and a contractor with an excellent proposal submitted a price that was less than 1% higher than a contractor who submitted a proposal that just met requirements. The contract award had to go to the "just met requirements" contractor even though it was clear the Government would have received better value with the slightly higher cost.

6.5 Design Build Adjusted Score

This method was described by Ken Leuderalbert, Florida Department of Transportation, Manager of Quality Initiatives. The method is used solely for selecting contractors for Design-Build projects in the Florida Department of Transportation. Basically, it is similar to the Pre-qualification - Submit Proposals, method described above but the technical evaluation panel assigns a percentage score to the technical proposals from Phase II. Then the submitted price is divided by the technical score and the lowest price wins. The table is a sample (not from a real project) of the "Adjusted Score".

	Bid Price	Technical Score	Calculation	Adjusted Bid
Offeror 1	1,000,000	80%	1,000,000/.8	1,250,000
Offeror 2	1,200,000	95%	1,200,000/.95	1,263,157
Offeror 3	900,000	65%	900,000/.65	1,384,615

Offeror 1 would be awarded this project.

The advantages are:

a. It eliminates another level of proposal review where price and technical factors are considered together to determine best overall value.

b. It helps alleviate appearances of favoritism. (The technical evaluation panel does not see the price during technical proposal reviews).

The disadvatages are:

a. It does not allow for trade offs between cost and technical merit and therefore the "Best Overall Value" contractor may not get the award.

7.0 The Source Selection Plan

Once the decision is made to use the Source Selection method a plan should be prepared to define the process and evaluation methods to be used. This plan actually starts with the formation of the team and choosing the delivery method. For small non-complex acquisitions the plan can be very simple but for larger more complex acquisitions it can be very complex.

In Federal Acquisitions a source selection strategy or acquisition plan must be developed. Federal Acquisition Regulation Part 15.303(b) states in part that one of the requirements of the source selection authority is to, "Approve the source selection strategy or acquisition plan, if applicable, before solicitation release." Many agencies have developed guidelines and requirements for what is commonly called the "Source Selection Plan".

The major purposes of most Source Selection Plans include;

- Defining a specific approach for soliciting and evaluating proposals.
- Describing the evaluation factors and subfactors, their relative importance, and the methodology used to evaluate proposals.
- Providing essential guidance to the solicitation developers, especially for putting together the solicitation sections dealing with proposal preparation and evaluation.
- Serving as a charter and guide for the source selection team on the roles of the members and the conduct of the entire source selection from proposal evaluation, through the cost/price/technical tradeoff, award decision, and debriefing (AMC Pamphlet 715-3, 1998).

Appendix A is a blueprint for a Source Selection plan from AMC Pamphlet 715-3 and shows recommendations for the contents and basic layout of a source selection plan.

Basically, as stated earlier the Source Selection Plan becomes a map for the entire procurement process from team selection to debriefing of unsuccessful offerors and should be the document used to develop the solicitation and evaluate proposals.

7.0 Determining What and How to Evaluate Proposals

8.1 Evaluation Factors and Subfactors

Evaluation Factors and Subfactors are descriptions of those aspects of a proposal that will be evaluated quantitatively or qualitatively to assess which proposal can best meet the requirements as described in the solicitation. They are also commonly referred to as evaluation criteria. They are the basis of what the proposals will be evaluated on and how the selection will be made.

For Federal Acquisitions all of the evaluation factors and subfactors must clearly be stated in the solicitation and the Source Selection Plan. The Federal Acquisition Regulation (FAR Part 15.304) requires Cost and Past Performance to be evaluation factors (unless under very specific circumstances), and depending on dollar value the extent to which Small and/or Small Disadvantage Businesses are used. The Federal Acquisition Regulation Part 15.304 clearly states the requirements for evaluation factors and subfactors and is therefore included in part below. Key elements of this section are colored.

15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.
(b) Evaluation factors and significant subfactors must--
(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and
(2) Support meaningful comparison and discrimination between and among competing proposals.
(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)) (also see Part 36 for architect-engineer contracts);
(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(A)); and
(3)(i) Except as set forth in paragraph (c)(3)(iv) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed $1,000,000.
(ii) Except as set forth in paragraph (c)(3)(iv) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed $100,000. Agencies should develop phase-in schedules that meet or exceed this schedule.
(iii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).
(iv) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.
(4) The extent of participation of small disadvantaged business concerns in performance of the contract shall be evaluated in unrestricted acquisitions expected to exceed $500,000 ($1,000,000 for construction) subject to certain limitations (see 19.201 and 19.1202).
(5) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

Individual agencies also may require different evaluation factors to be considered and limit the number of factors that can be used. For instance, for certain acquisitions Sub-Contracting Plans and Sub-Contracting with Small and/or Small Disadvantaged Businesses is a required element in more stringent detail than prescribed in the Federal Acquisition Regulation. Interesting to note, The Disney World Company also considers Small and Small Disadvantaged Businesses when selecting contractors (Greenwood, Lee).

The Naval Facilities Engineering Command's Policy is to minimize the number of non cost/price evaluation factors with normally three to five. NAVFAC recommends that typical evaluation criteria include:

1. Past Performances
2. Subcontracting with Small and Small Disadvataged Business
3. Technical/Management Approach
4. Key Personnel (NFCTC, 1998)

These major factors seem to be very common with all of the agencies I interviewed including, Florida Department of Transportation., University of Florida, and the Army Corps of Engineers.

AMC Pamplet 715-3 summarizes the purpose and importance of Technical evaluation factors.

> Technical evaluation factors address the proposal's technical and performance efficiency and it is important to get the correct factors. The basic requirements for noncost evaluation factors are:
>
> - A reasonable expectation of variance among proposals in that area.
> - A variance that can be measured quantitatively or qualitatively.
> - The factor must be a true discriminator.
>
> An evaluation factor should be chosen only if your requirements warrant a comparative evaluation of that area. The simplest way to assess a potential evaluation factor is to ask: "Will superiority in this factor provide value to the Government and is the Government willing to pay more for that superiority?"
>
> Selecting the right evaluation factors is one of the most important decisions you will make in designing your evaluation process. We are often faced with the triple problem of less time, less funds, and fewer available personnel to devote to source selections. If you don't concentrate on what's important in selecting the best value offeror you could end up with the evaluation team wasting a lot of time and effort looking at issues that don't differentiate between offerors. This can also result in a weak evaluation that

doesn't give the source selection authority the information needed to make a good selection.

It is my experience that selecting the right evaluation factors is not just one of the most important decisions but the most important decision in designing the evaluation process. Evaluation Factors must not only meet the criteria stated above but they also must be written in a clear and concise manner so the contractor clearly understands what the Government wants. I have been in many circumstances where unclear evaluation factors have led to difficulties and undo hardship on the evaluation committee and offerors.

8.1.1 Selecting Evaluation Factors Do's and Don'ts

The importance of selecting appropriate evaluation factors can not be stressed enough. According to Vernon J. Edwards, a respected consultant in Government contracting: "I would suggest that the single most effective thing acquisition managers can to do streamline the best value source selection process is to improve their choices of evaluation factors for award." (Savare, Matthew. www.monomouth.army.mil/cecom/ac/hb/sourceselection12.html)

Almost all of the organizations that I interviewed said that when they started doing Source Selections they asked for too much detail. However, it seems from my interviews that most everyone, including the contractors were satisfied with the evaluation factors and/or criteria that is currently being used and did not see a need for major improvements. The following is a list of general lessons learned and or advice from the different organizations and/or my personal experience.

- Only ask for the information that will discriminate between proposals and can be evaluated.

This has been stated before however, it is worth repeating. Specifically, make sure that the evaluation factors will actually be of value in discriminating between proposals and/or actually

be an indicator of performance. Paul Nishaizaki, an architect from the NAVFAC Pacific Division, used the following example as an element under Past Performance that was not particularly valuable. He said that he has seen solicitations that ask for the data on completed contracts that included among other things: Original award amount, final contract amount, original contract completion date, and final completion date and that this information was not particularly useful. For most projects the original amount and completion date is different from the final contract amount and completion date and as an evaluator there was no way of knowing what the causes were for the differences without having personal knowledge and/or requiring the contractor to submit some kind of narrative description.

- Insure Criteria is not inconsistent or spread out too much in the proposal.

Mr. Richard Palmer, from "C" Construction Company, stated that sometimes it is difficult to really nail down all of the criteria because it is spread out all through the request for proposal. Mr. Larry Fisk, Naval Facilities Engineering Commands Southern Division, also stated that this caused difficulties in some of their proposals. In order to help alleviate his organization now develops a paragraph that identifies special project requirements and all of the evaluation factors refer back to that paragraph. This process is described in more detail in section 8.4.

I was involved in a Design-Build Golf Course project that had criteria spread throughout the proposal. There were some minimum requirements that included in part: pump size and number, reservoir size and dimensions, number of sprinkler heads and types, number of holes that could be taken out of operation at a time, and the control system to be used. In addition, there were desirables that if included would be considered favorably. An example of one of the desirables was watering within some number of yards to the tee but closer was better.

The minimum requirements were spelled out in the solicitation but they were "spread out" throughout the solicitation. The technical evaluation board and it seemed offerors had some problem keeping all of the criteria organized and too make sure they met all of the minimum requirements while trying to meet the desirables. The technical evaluation board had to spend a lot of time going through the RFP and back to the proposals to make sure that all of the minimum requirements were met. The Technical Evaluation Board all agreed at the conclusion of the technical board that it would have been much better to have a succinct list of project requirements on one or two pages.

- Do not be afraid to limit the amount of information.

It is my opinion that this is most applicable to specific factors like; Past Performance, Safety, Quality Control, and other factors that are not as prone to innovations or creative solutions that would require significant explaining. I was involved in a RFP that was for the repair of a Typhoon damaged hangar. Most of the work was structural with some interior repairs. One of the sub factors under Past Performance was to demonstrate that the offeror had experience on similar type projects. Several of the offerors submitted extensive lists of projects and I remember specifically that one of the offerors submitted a list of 80 projects ranging from runway lighting repairs to concrete wharf construction and repairs. The technical evaluation board had to wade through this information and determine what was applicable and what was not. After that solicitation our office started limiting the number of project to show experience to no more than 10 or 15 projects. Naval Facilities Engineering Commands Southern Division, limits the number of projects to 3 to 5 that relate specifically to the identification of special project requirements paragraph and also state in their proposals that they desire not to exceed a certain number of pages (Fisk, Larry).

In my opinion another example of a place to limit pages is the submission of corporate Safety Plans or Quality Management Plans. These documents are usually large and can constitute a significant portion of the bulk of a proposal and do not necessarily provide clear discrimination between offerors. Most of the time corporate Safety Plans and Quality Control Plans contain basically the same information from one company to the next, however some companies do have unique aspects within these plans. But, for the most part they are the same. It is difficult for a technical evaluator to wade through all of the material in these plans and pick out unique aspects and/or valuable aspects that set contractors apart from one another. Our office changed our policy of asking for complete plans limiting the information to unique aspects and project specific aspects of Quality and Safety Plans and limited the number of pages that would be accepted. It may not always be appropriate to limit information, like most factors it depends on the project type and complexity.

- Make sure evaluation factors and submittal requirements are clear and specific.

Mr. Nishaizaki, (NAVFAC Southdiv), stated that he has sometimes seen that after proposals are received that the government wasn't clear on the types of submittals and/or clear enough on the evaluation factors by the content of the different proposals. Mr. Garicia of J.A. Jones Construction, stated that his office had submitted proposals in the past where they clearly misinterpreted the evaluation factors and that he would like to see presentations and/or interviews to insure a mutual understanding of requirements.

It appears to me that most of the organizations that I talked to had already gone through the learning curve for developing and selecting evaluation factors and were doing much better at putting clear evaluation factors and submittal requirements in their solicitations.

8.2 Weighting the Factors and Subfactors

Weighting of evaluation factors and subfactors is the "ranking" of importance of one factor over other factors. The Federal Acquisition Regulation requires that the relative importance of factors and subfactors be clearly stated (FAR PART 15.304(d)). This is not required in private industry. The Walt Disney World Company does not typically rank their evaluation factors; they review their proposals in the entirety and choose the best contractor with no formal ranking of evaluation factors (Greenwood, Lee). For Federal procurements the relative importance of evaluation factors and subfactors is usually established by priority statements, numerical weighting, or a combination of these. The FAR also clearly requires that the difference between cost/price and other non cost/price be clearly stated at a minimum as follows:

> (d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204-5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.
> (e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are--
> (1) Significantly more important than cost or price;
> (2) Approximately equal to cost or price; or
> (3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

Naval Facilities Contracts Training Center lists examples of Priority Statements. Two of the seven examples listed are included below:

Example 1. Priority Statement

> Proposals will be evaluated on technical/business qualifications and price. The technical/business qualifications factors will rank as the highest factors in this procurement, and are significantly more important than price, although price will also be important in the evaluation process. Within technical qualifications, there are three subfactors. These are corporate capabilities, key personnel and past performance data. Past Performance is of greater importance than the other two subfactors. Key personnel and corporate capability are of equal importance.

Example 2. Numerical Relationship

> The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price and technical factors listed below considered.
> The evaluation factors listed below are in descending order of importance:
> (1) Past performance on similar projects
> (2) Technical and Management Approach
> (3) Experience on similar projects
> (4) Qualifications of key personnel
> (5) Price/cost (NFCTC, 1998)

Whatever the priority statement is it must show the relationship of the importance of the individual factors. This becomes important when selecting the "best value" contractor. If the priority statement is weak or ambiguous it can cause different interpretations among the Source Selection Team and contractors and some confusion in choosing the "best value" contractor.

8.3 Standards for Evaluation Factors

Evaluators must be able to determine the relative merit of each proposal with respect to the evaluation factors. Evaluation standards provide guides to help evaluators measure how well a proposal addresses each factor and subfactor identified in the solicitation. Standards permit the evaluation of proposals against a uniform objective baseline. This helps to minimize bias and promotes consistency in the evaluation by ensuring that the evaluators evaluate each proposal against the same baseline (AMC Pamphlet 715-3, 1998).

Two examples of evaluation standards follow:

> This standard shall be met when the offeror provides evidence of a documented and functioning in-house training program for the handling, transport and disposal of hazardous waste in accordance with EPA and State guidelines and regulations. (NFCTC, 1998)

> *STANDARD FOR PAST PERFORMANCE* has been met when the offeror provides at least 10 of any combination of the following: Performance evaluations for past contracts, letters of recognition, letters of appreciation, recognition awards, and any other client documentation that recognizes acceptable performance on past projects.

When our office first started doing Source Selections on a regular basis we did not include evaluation standards. I was involved with about 6 of these Source Selections and after we incorporated evaluation standards it did in fact eliminate some of the confusion and personal interpretation problems that we were having in earlier solicitations.

8.4 Using Identification of Special Project Requirements Paragraphs

The Southern Engineering Field Division, Naval Facilities Engineering Command (SOUTHDIV) use identification of special project requirements as one of the basis to evaluate offeror's proposals. The solicitation has a paragraph that clearly states the special project requirements and then the evaluation factors are developed so they relate back to the special requirements (Fisk, Larry).

For example, they issued a solicitation for a 2 Phase Design Build Wharf Utilities Project in Mayport Florida. The special project requirements paragraph said that experience with electrical distribution systems among other things was required. The evaluation factors were all related back to the special project requirements paragraph; past performance, technical qualifications, management approach, and small business subcontracting efforts (Fisk, Larry). One of the offerors filed a GAO Protest, *Durocher Dock & Dredge/Black & Veatch, A Joint Venture, B280853, November 24, 1998*, in short stating that they were improperly evaluated and should have been ranked higher and included in the second phase. However, the GAO denied their protest stating in part:

> The TEB assigned Durocher's proposal a rating of marginal under this factor. Under the two subfactors evaluated in this area--design team and construction team--offerors were instructed to submit key personnel staffing that demonstrated experience in the elements included in the **Specialized Project Requirements** provision of the RFP. Offerors were also required to provide qualifications and staffing capability to support the project.

> Under the design team subfactor, the TEB found that only one individual Durocher proposed as "key personnel" had participated in any of the projects Durocher described in its proposal (and even that individual had participated in only one project described in the proposal), and identified this as a weakness in the proposal. The TEB further found that the proposed key personnel demonstrated no waterfront electrical distribution, steam, or fuel system experience and considered this a weakness in the proposal. Under the construction team subfactor, the TEB found that the proposed key personnel demonstrated no waterfront electrical distribution experience, and that the waterfront experiences listed for key structural personnel were minimal in scope. The protester does not rebut any of the TEB's findings in this regard.
>
> In its proposal, Durocher identified the firm of [DELETED] as a mechanical team member and [DELETED] as the electrical installation team member. The TEB noted, however, that the protester did not include any personnel data for [DELETED], and found that the proposal demonstrated no specific diesel fuel or steam work experience by construction project managers, superintendents, or quality assurance personnel.

This GAO case summary is included in its entirety in Appendix B. It should also be noted the case is also an excellent example of a TEB supporting their decision with a solid narrative.

The below is a partial example of a special projects requirement provision of a solicitation currently in Phase II of the solicitation.

> This project involves the site-adapting design and construction of a standard US Navy T-10 aircraft jet engine test cell facility to support intermediate aircraft engine maintenance for F/A –18 squadrons at Marine Corps Air Station, Beaufort, SC. These test cell facilities more closely resemble a working piece of machinery than a typical brick and mortar type project. They are designed and constructed to operate without failure when subjected to the stresses induced by continuous operation of high-powered aircraft jet engines within the engine run room. The test cell construction involves fabrication and installation of complex facility equipment and instrumentation. The facility equipment and instrumentation to be provided closely integrates with NAVAIR furnished and installed equipment, instrumentation test systems and a variety of aircraft jet engines. The construction of a T-10 jet engine test cell involves modular prefabricated steel and sheet metal type fabrication. The major components of the facility are jet engine run room, primary and secondary air inlets, movable primary air inlet turning vanes, exhaust augmenter and exhaust stack, all constructed with acoustically treated panels and materials. The augmenter will be the US Navy T-10 standard test cell air cooled round type used in other similar facilities around the world. The test facility and especially the augmenter are subjected to continuous vibration, acoustical loading and pressure variations. In addition the augmenter is subjected to a wide range of variations in internal temperatures from ambient up to 2,800+F and airflow velocities in excess of 2,500 feet per second. The quality of the fabrication of the facility and especially the augmenter system is extremely critical to ultimate success of this test facility project. The manufacture and installation of the prefabricated aircraft engine

test facility is desired to be performed by a manufacturer with an adequate history of proven successful experience in the fabrication of complex close tolerance prefabricated steel/metal type structures who is regularly engaged in this type of work, has the equipment, tools, technical personnel and experienced shop personnel for the fabrication of close tolerance prefabricated structures, and demonstrates adequate shop space for fabrication and shop assembly/factory demonstration of the test facility indoors. Other complex systems include air start system, fuel and oil preservation systems, engine test trailer restraint system, proof load test system, fire protection, industrial waste, power and lighting. Supporting facilities will involve replacement of the existing air start compressor, installation of 20,000-gallon underground fuel tank, fuel oil separator, civil site work and utilities. The estimated price is between $5,000,000 and $10,000,000. Proposals will be evaluated using Two Phase Design-Build Request for Proposal procedures that will in Phase II result in an award of a firm-fixed price design-build contract to the responsible offeror whose proposal, conforming to the solicitation, is the "Best Value" to the Government, price and technical factors considered. Phase I is the pre-qualification phase wherein offerors will be evaluated on: FACTOR A – Past Performance for Design and Construction; FACTOR B – Small Business Subcontracting Effort (applies to small and large business); and FACTOR C - Technical Qualifications in Design and Construction and Factor D - Management Approach. The most qualified offerors (not to exceed 5) will be selected to proceed into Phase II . The Phase II Request for Proposals will be issued only to the pre-qualified offerors. Phase II will include the Price Proposal and an additional technical factor Technical Solutions, which will require submission of a limited design solution for the project site work and other sub-factors that define the quality of construction. (www.esol.navfac.navy.mil, N62467-99-R-1055)

According to Mr. Larry Fisk, this paragraph was designed to help streamline the Source Selection Process and so far has worked well. It appears that this approach helps offerors insure that their proposals are focused on important factors and helps evaluators focus on what is important in an offeror's proposal.

8.5 Establishing a Rating Method

The rating method is the "score" that each evaluation factor will receive. Each rating must have a definition. There are 3 common rating methods when developing a proposal and AMC Pamphlet 715-3 is a summary of the methods and the descriptors:

Typical Ratings and Descriptors			
Each rating must have a definition.			
TECHNICAL MERIT ratings reflect the government's confidence in each offeror's ability, as demonstrated in its proposal, to perform the requirements stated in the RFP. Choose one method (e.g., numerical, adjectival, or color) to evaluate technical merit.			
NUMERICAL	ADJECTIVAL	COLOR	DEFINITION
90-100	Excellent	Blue	Proposal demonstrates excellent understanding of requirements and approach that significantly exceeds performance or capability standards. Has exceptional strengths that will significantly benefit the Government.
80-89	Good	Green	Proposal demonstrates good understanding of requirements and approach that exceeds performance or capability standards. Has one or more strengths that will benefit the Government.
70-79	Satisfactory	Yellow	Proposal demonstrates acceptable understanding of requirements and approach that meets performance or capability standards. Acceptable solution. Few or no strengths.
60-69	Marginal	Amber	Proposal demonstrates shallow understanding of requirements and approach that only marginally meets performance or capability standards necessary for minimal but acceptable contract performance.
<60	Unsatisfactory	Red	Fails to meet performance or capability standards. Requirements can only be met with major changes to the proposal.

Rating systems which use adjectives or colors are usually the most successful because they allow maximum flexibility in making the tradeoffs among the evaluation factors (AMC Pamphlet 715-3). However, many organizations use a numerical system. Ms. Claudia Hunley, Army Corps of Engineers Jacksonville, stated that the numerical system is easier to explain and easier for members of Technical Evaluation Boards to understand and for this reason they use a numerical rating system.

A narrative definition must accompany each rating in the system so that evaluators have a common understanding of how to apply the rating. For example, a rating of excellent (or blue or

90-100) could be defined as meaning an outstanding approach to specified performance with a high probability of satisfying the requirement. What is key in using a rating system in proposal evaluations, is not the method or combination of methods used, but rather the consistency with which the selected method is applied to all competing proposals and the adequacy of the narrative used to support the rating (AMC Pamphlet 715-3, 1998).

Each major rating is described below:

Adjectival

Adjectives (such as excellent, good, satisfactory, marginal, and unsatisfactory) are used to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. Adjectival systems may be employed independently or in connection with other rating systems. Holmes & Edwards

Color Coding

This system uses colors to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. For instance, the colors blue, green, yellow, amber, and red may indicate excellent, good, satisfactory, marginal, or unsatisfactory degrees of merit, respectively.

Numerical

This system assigns point scores (such as 0-10 or 0-100) to rate proposals. This rating system generally allows for more rating levels and thus may appear to give more precise distinctions of merit. However, numerical systems can have drawbacks as their apparent precision may obscure the strengths, weaknesses, and risks that support the numbers. Therefore, some organizations do not permit the use of numerical rating systems.

Narrative

Narrative is used in conjunction with a rating system to indicate a proposal's strengths, weaknesses, and risks. Adjectival, color, and numerical ratings must be supported with narrative

statements. Narrative statements can describe the proposals' relative strengths, weaknesses, and risks to the source selection authority in a way that adjectives, colors, and numbers alone cannot. A narrative is required when evaluation standards are being applied, when a comparison of proposals is being made, and when a cost/technical tradeoff is conducted. The narrative provides a reasonable and rational basis for the selection decision (AMC Pamphlet 715-3).

Different organizations may or may not require the use of specific rating methods and the three rating methods above are not the only rating methods that can be used. Examples of different requirements are: NAVFAC Policy is to use an adjectival system, the Air Force uses a color system, and the Florida DOT uses a numeric system that ends in an overall percentage score for their technical proposals.

8.6 Summary

Once a solicitation is issued the most important thing is to follow what is said in the solicitation in terms of evaluation factors, evaluation factor weight, standards, and the rating method and support the selection decision with adequate documentation. Developing the factors will have the most significant impact in terms of ease of evaluation, time required to evaluate proposals, and reduction in the probability of a protest. Making it easier to evaluate and identify strengths and weaknesses by choosing the right evaluation factors, weights, standards, and rating methods will ultimately make it easier, faster, and safer (from protests) to make an award to the Best Value contractor.

9.0 The Solicitation

The solicitation provides all of the information the offeror needs to understand what you are buying, how you are buying it, and how you will select who to buy it from. This information includes: the work requirements; the terms and conditions; evaluation factors and significant

subfactors; the relative importance of the factors and subfactors; instructions to offerors, including whether award might be made without discussions; and other exhibits and attachments. When read as a whole, the solicitation should convey to the offerors a clear understanding of what you are buying and the areas where technical and cost tradeoffs can be made in their proposals to best satisfy the Government requirements.

The solicitation is what the contractors will see and what they will use to develop their proposals. When developing the solicitation consistency across the board is important. There should not be conflicts between the description of what we are buying, instructions on how to prepare a proposal, and guidance on important factors/subfactors , and the ground rules for the evaluation (AMC Pamphlet 715-3, 1998).

10.0 Evaluating Proposals

Evaluating proposals is the process in which each proposal is evaluated in detail against the evaluation factors and subfactors and the requirements set forth in the solicitation, and assigning a rating with a supportive narrative. It is not an analysis of proposals against each other. For Government projects it is very important that evaluations be fair, thorough, and impartial. It is also important to stress detailed analysis. The Technical Evaluation Board must be detailed in their review and reach a consensus in their ratings of the proposals.

Additionally, as stated in section 8.5, the technical evaluation board must provide narrative statements to establish a written record. Numerical scores and other rating techniques are not conclusive data to make the source selection decision. Only evaluations and ratings substantiated by documented specific strengths, weaknesses, and risks can be credible and justifiable. General terms such as "weak", "poor", or "excellent" must be supported with specific reasons as to why the proposal is "weak", "poor", or "excellent" in relation to the

standard for the specific factor and/or subfactor being evaluated. A technical evaluation that does not substantiate proposal strengths, weaknesses, and risks will not be able to stand up in a protest (AMC 715-3, 1998).

10.1 GAO Case Studies

I have chosen two, of many GAO cases, that demonstrate the importance of the evaluating the proposals according to what is prescribed in the solicitation. It is worth noting that there are a large number of cases that demonstrate this and that this is probably the single biggest factor for protests that are sustained against the government. For more extensive review of GAO cases the GAO's web site contains a complete list of all the cases they have reviewed since 1996. The site is www.gao.gov. Each of the case summaries described below are included in Appendix B.

10.1.1 Unfair Evaluation of Proposals

GAO Case *Tidewater Homes Realty, Inc., B-274689, Dec. 26, 1996*

In this case the GAO found that there was an unequal evaluation of the proposals in solicitation by the Department of Housing and Urban Development (HUD) and sustained the protest. They found that HUD's technical evaluation panel rated one of the technical evaluation factors the protestors received a score of 6 while the awardee's proposal received a score of 24 points. The technical evaluation panel asserted that the protestor's proposal lacked detail and clarity in the factor, however, when the GAO reviewed the proposals they found that the information in each proposal was essentially the same. For another technical factor the agency downgraded the protestors proposal because they said it was vague in certain areas. However GAO's review of the factor showed just the opposite.

It is difficult to determine what led to the protest and missed interpretation of the proposals. It could have been a lack of detailed review, not following the evaluation factors,

and/or bias toward one contractor on the part of the Technical Evaluation Panel. However, it clearly shows the need to do a detailed analysis of the proposals so key factors or points are not missed.

10.1.2 Not Following Established Criteria, inadequate documentation

GAO Case *Lloyd H. Kessler, Inc.*, B-284693, *May 24, 2000*

In this case the agency did not perform the evaluation as stated. In fact the agency's actual evaluation differed from that stated in the RFP in that the relative weights for experience and past performance were reversed and experience was assigned 70 points and past performance was assigned 30 points. Additionally, the agency rated very highly for experience in bioengineered slope protection experience when in the RFP it was never mentioned to be important. Additionally, in the notes of this case (#5) the GAO alludes to the importance of documenting the selection decision and the GAO states, "even beyond the agency's failure to disclose the actual evaluation plan in the RFP, the documentation supporting the evaluation is minimal, such that it would be difficult to determine the reasonableness of the evaluation, even if the RFP were not defective."

10.2 Oral Presentations

Oral presentations are another method of presenting proposals. It must be determined early in the process if oral presentations are going to be used and clear and precise instructions must be put into the solicitation for conducting the oral presentations. Also, the evaluation criteria/factors should be explicitly stated and clear so offerors know what information is expected. (AMC Pamphlet 715-3, 1998; NFCTC, 1998)

For Federal Contracting it is very important to make sure the content of the oral presentations are documented. There are many sustained cases where during oral presentations the

government did not adequately document the presentations and therefore there is not an adequate record of performance. A recent example is *J&J Maintenance, Inc., B-284708.2; B-284708.3, June 5, 2000.* The contract was for housing maintenance and service and the GAO sustained the protest stating in part,

> In this procurement, the proposals addressing the quality factor consisted of oral presentations, briefing slides, and resumes. No written technical proposals were allowed. [3] While the RFP stated that the agency could videotape and/or record the oral presentations, the agency did not do so. RFP amend. 9, at L-6. In this case, the offerors' slides and the evaluators' notes are the only record of what was included in the oral presentations. We recognize the SSO's discretion to decide the method and level of detail of the record of an oral presentation and that the use of offerors' slides and government notes are two of several possible methods of documenting an oral presentation under FAR § 15.102(e). Here, however, the slides and notes do not present sufficient information to determine if the evaluations of J&J's and D&Z's proposals were conducted in a reasonable and equal manner. The slides provide only an outline--in most cases, the slides include general headings only--and do not describe what was included in the approximately 2-hour oral presentations and question-and-answer sessions. [4] The evaluators' notes are not summaries of the presentation but, for the most part, are selective comments which are sketchy and provide almost no elaboration, or even a description, of what was contained in the portion of the oral presentation being commented upon by the evaluator.
>
> In addition, the consensus evaluation ratings consist only of numerical scores for each offer in each evaluation element, without any accompanying narratives to show how the panel reconciled the divergent opinions of the individual evaluators on any particular facet of an oral presentation or how the panel achieved a consensus rating for any element of the evaluation. There is no evidence in the consensus ratings sheets (or elsewhere in the record) that the evaluators discussed the strengths and weaknesses of the proposals or used any other method to reconcile their differences to arrive at the consensus scores. Agency Report, Tabs I, J, Consensus Ratings for Quality Proposals (D&Z and J&J, respectively).
>
> We understand that oral presentations are an effective way to streamline the source selection process and to enhance the agency's understanding of an offeror's approach, and we do not believe that the FAR requirement for documentation described above necessarily limits this flexibility. FAR §§ 15.102(e) and 15.308 do not require a particular method of establishing a record of what was said by offerors during oral presentations or place an excessive burden on contracting agencies in recording oral presentations. Whatever method is chosen, FAR §§ 15.102(e), 15-305(a) and 15-308 do establish an obligation to provide a reasonably adequate record of such presentations and the evaluation thereof. Such a record permits our Office to perform a meaningful review of the agency's selection decision. Here, the oral presentations constituted the offerors' entire technical proposals (the only written portions of proposals related to past performance). The record of the oral

presentations and the evaluation is so sketchy, that we have no means to determine, based upon the record before us, the reasonableness of the agency's selection.

The other key elements in conducting oral presentations are:

- Limit the time for each presentation.
- Some of the proposal should be in writing, ie hard data such as performance history or anything that will be included in the contract documents.
- If exchanges are going to be allowed during the presentation then it is important that they are fair and meaningful for each offeror (AMC Pamphlet 715-3, 1998).

The use of oral presentations depends on the agencies/organizations that I talked to. For instance, Ms. Claudia Hunley, ACOE, said they use them when they feel that it is appropriate, and said as a contracting officer she liked using oral presentations. Mr. Phenix Palmer of FDOT and Mr. Larry Fisk (SUOUTHDIV) said they prefer not to use oral presentations. The University of Florida extensively uses oral presentations when using the Source Selection Process.

10.3 Summary

The technical evaluation of the offeror proposals is the foundation of the source selection process and the pending contract award. It is also the source of the biggest areas for contractors to protest. The development of good evaluation factors and subfactors will significantly effect the complexity of the evaluation process and ease of evaluation. The key points in evaluating proposals are:

- Evaluations must be fair, thorough, and impartial.
- Document specific strengths, weaknesses, and risks of the proposed approach.
- It must be done in accordance with the requirements stated in the RFP and the Source Selection Plan.
- The evaluation must provide enough detail for determining merits between proposals and enough detail for the contracting officer to make a best value determination and or

establish a competitive range of offerors for further consideration. (AMC Pamphlet 715-3, 1998; NFCTC, 1998)

Even if the evaluation factors are not very good and/or hard to evaluate if the above points are followed the risk of a successful protest are low.

11.0 Exchanges with Offerors After Receipt of Proposals

In Federal Contracting there are basically three types of exchanges as per FAR 15.306; clarifications and award without discussions (Clarifications), communications with offerors before establishing the competitive range (Communications), and exchanges with offerors after establishment of the competitive range (Discussions).

Clarifications are informal and limited to correction of minor deficiencies, clerical errors, as well as to give the offeror the opportunity to resolve adverse past performance issues. Communications are exchanges with an offeror whose past performance is the only factor preventing them from getting into the competitive range. Discussions are where the offerors will be allowed to revise their proposals. It is the actual "negotiating" proposals and prices can be changed and bargaining can take place.

Discussions must be meaningful and fair. The following must be insured when conducting discussions:

- Identify all deficiencies in the proposal
- Specify all deficiencies to the offeror
- Provide a reasonable time for revision
- Make a complete record of the discussions
- Hold discussions with all other offerors in the competitive range (AMC Pamphlet 715-3, 1998; NFCTC, 1998)

12.0 Selection Decision

For Federal Acquisitions the final award decision belongs to the Source Selection Authority. According to AMC Pamphlet 715-3, the source selection authority must ensure the selection decision;

- Is based on a comparative analysis of the proposals
- Is consistent with stated evaluation factors and subfactors; and
- When tradeoffs are permitted, consider whether or not perceived benefits are worth any price premiums.
- Make the decision on a rational basis and set it forth in an independent, stand-alone defensible document.

The minimum information that is needed to document the award should include:

- A description of the acquisition
- The names of offerors
- A summary of the strengths and weaknesses of each proposal and offeror
- The reasons why the selected contractor provides the greatest probability of satisfying the Government's requirements. (AMC Pamphlet 715-3, 1998, NFCTC, 1998)

The below table is the AMC Pamphlet 715-3's Blueprint for the source selection decision document.

Documenting the Selection Decision and Awarding the Contract

Source Selection Decision Document for (specify product/service & RFP #)
1. Decision Statement.
Example: As Source Selection Authority for this acquisition, I have determined that the XYZ product/service proposed by Offeror C provides the best overall value to satisfy Army needs. This selection was made based upon the factors and subfactors established in the solicitation and my integrated assessment and comparison of the strengths, weaknesses, and risks of the proposals submitted in response to the solicitation. This memorandum documents the basis for my decision.

2. Brief description of the product/service called for in the solicitation.
3. Brief description of the Basis for Award including the major factors against which proposals were measured and their relative order of importance.
4. A list of offerors in the competitive range.
5. Rationale for business judgments and tradeoffs. Include the following:
• Succinctly compare each proposal to each of the others, focusing on key proposal differences (strengths, weaknesses, and risks) that surfaced in the evaluation and their impact on the acquisition objectives.
• Clearly explain specific tradeoffs that led to the decision.
• Clearly explain the specific benefits of technically superior offeror(s) and why they are or are not significant enough to warrant any additional cost.
6. Summary.
Example: In summary, based on my integrated assessment of all proposals in accordance with the specified evaluation factors and subfactors, it is my decision that Offeror C's proposal offers the best overall value.
Signature **Source Selection Authority**

13.0 Notification and Debriefing of Unsuccessful Offerors

The FAR 15.503 requires that within three days after the date of contract award, the contracting shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award. This notice must include;

(i) The number of offerors solicited;
(ii) The number of proposals received;
(iii) The name and address of each offeror receiving an award;
(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and
(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

It is my experience that this is not a difficult step, however, if paragraph (v) is done with enough detail, it may help contractors understand why they did not get the award and eliminate the need for post award debriefings. For some solicitations we edited the technical evaluation report and sent the contractor the comments from the Technical evaluation report that pertained to their own proposal. The contractors felt that this information was very useful and helpful.

The Federal Acquisition Regulation also requires post-award debriefings. These debriefings are usually chaired by the Contracting Officer and supported by members of the Selection Team. The debriefing can be oral, in writing, or by any other method that is acceptable to the Contracting Officer. At a minimum the Federal Acquisition regulation part 15.506 requires that the debriefing an offeror who responds on time (within three days of written notification of contract award) shall be debriefed and furnished the basis for the selection decision and contract award. It also states that,

> (d) At a minimum, the debriefing information shall include--
> (1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
> (2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
> (3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
> (4) A summary of the rationale for award;
> (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
> (6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
> (e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including--
> (1) Trade secrets;
> (2) Privileged or confidential manufacturing processes and techniques;
> (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.
(f) An official summary of the debriefing shall be included in the contract.

It is my experience that during debriefings the contractors want to know how they can do better and sometimes what the other contractors did to score higher than them. It is my opinion that it is important for the Government to divulge as much information as possible to help a contractor improve their proposal, but it is imperative that the Government representatives stay within the bounds of the offeror's own proposal. For instance, one of the evaluation factors we often used was something like how will you manage quality on the project. Some contractors took an approach of describing their quality control organization and their companies commitment to quality and how they manage quality overall and by doing this they would show that they knew how to manage quality on any project. This is fine and was usually graded "Acceptable" unless they really could show a stand out quality organization. Another contractor may have gone into their overall organization and quality control procedures briefly but then really focussed on how they would insure quality on specific aspects of the project and be rated "Highly Acceptable". During a debriefing the offeror who was rated "acceptable" would want to know how he could improve his rating. The government representative may be able to tell him to be more project specific next time but can't really say we want you to do it like offeror B.

On the other hand, if an offer responded to an evaluation factor, "demonstrate your companies commitment to safety" and the offeror stated they have a safety incentive program but failed to describe it and received an "Acceptable" rating. The Government evaluator can tell them they could improve their proposal by describing their incentive program in more detail and that just stating that you have an incentive plan does not merit a high grade unless you can show its effectiveness and/or value to the employees.

Mr. Richard Palmer of "C" Construction Company, Inc., said that he would very much like it if the Government could provide more information on debriefings and maybe at least show the "grades" or ratings other contractors received. He said that it was his opinion that there is some perception in the industry that sometimes the Government Agency has a contractor in mind and that contractor is given some partial treatment. He felt that if all of the "ratings" were shown it might alleviate that perception somewhat and help contractors gauge how they are doing compared to other contractors.

Ms. Claudia Hunley, ACOE, stated that debriefings were very valuable for both the Government and the contractors and that the Government was able to learn how to make it easier to prepare and evaluate proposals.

Part III
Summary

14.0 Contractors View

The overall views of the contractors that I interviewed were consistent. Most of the contractors felt that the process was fair but some felt that the personalities and/or agency could and sometimes did bias the system. The major points from the contractors were:

- High Cost - Preparing proposals, especially Design-Build, is expensive. The range of rough cost I received was from $25K for smaller jobs to $100K for the more complex solicitations (Garcia, Richard; Pepper, David). Mr. David Pepper of Harry Pepper & Associates, Inc. said that he felt the high cost made it difficult for smaller contractors to compete.

  It is worth noting that the Florida DOT provides stipends for the contractors that are in the 2nd Phase of the 2 Phase Source Selection Process on Design Build projects to help offset the cost of preparation of the proposals. Mr. David Pepper and Mr. Jerry Stanley of Hughet Construction said that not getting a stipend definitely discourages potential offerors from competing on certain projects.

- Better coordination between owner and end user/facility tenant (Specifically Design-Build) - Both Mr. Richard Garcia and Mr. David Pepper stated that the end user/tenant does not really have a clear picture of what the end product is. Once the contract is awarded and the final designs and/or construction starts the tenant finds that they thought they were getting something else, usually something better, than what was actually in the contract. Additionally, Mr. David Pepper said that he much preferred the Design-Bid-

Build process partly because the A&E does not have the face to face time with the end users when developing the plans and specifications.

It is interesting to note, as stated in section 5.0, that the end users are included in all of the agencies/organizations selection teams. It is my experience in the Navy that this problem is inherent in the planning, design and/or development of the scope of work, and that the perceived lack of coordination is caused by many factors outside the scope of this paper.

- Evaluation Factors/Criteria is reasonable - All of the contractors felt that the evaluation factors/criteria have been developed and are reasonable and did not feel that there were any major problems with them. However, Mr. Knoll of J. A. Jones Management Services did say that he felt if there were too many factors/criteria and subfactors that the important discriminators in a solicitation were lost. I specifically expected contractors to say that they felt the some factors were overly burdensome and didn't understand what the agency/organization needed. However this was not the case. It is apparent that the agencies that I interviewed have fairly quickly learned what factors/criteria work well and don't work well.
- Criteria and/or Proposal strengths not enforced - Mr. Richard Palmer of "C" Construction Co. Inc. said that the design criteria needed to be more prescriptive and/or better defined. He felt that sometimes the government would require something and than later relaxes the criteria. For example, the government may specify some minimum sound rating criteria and than accept a proposal that really did not meet the minimum sound rating criteria. Mr. Knoll stated that he felt some contractors strategy was to tell the government what they want to hear to win but then not actually follow through and perform the work they

promised in their proposals. He also said that sometimes the proposals would be evaluated favorably for things that once the contract was awarded and execution started, the post award side of the contract administration did not feel was important.

- Other General comments -
  - Don't require color renderings they are very expensive
  - Don't change the format of required information from one solicitation to the next.

    Mr. Palmer, said that one agency would ask for Past performance in one prescribed way or on a certain form for one solicitation and then ask for the same information in a different format on the next solicitation. He felt it would be much better if the government would be specific about what they wanted and leave the format up to the individual contractors.
  - Don't require the same information to be submitted twice.

    For example, requiring information on Past performance in the pre-qualification stage and then requiring the same information again from the contractors on the short list.
  - Debriefings are very useful and helpful.
  - Increased use of Oral Presentations would be beneficial to help insure that contractors understand requirements.

15.0 Conclusions and Recommendations

The Source Selection Process continues to gain popularity and is seeing increased use. All of the owner representatives that I talked to felt that it helped decrease adversarial relationships and improve the quality of construction/service. In fact, Mr. Larry Fisk (SOUTHDIV) said their office has almost completely abandoned the IFB processes because the acquisition/pre-award time is not that much different from Source Selection and the dividends in performance are

worth the extra time. He said that an average IFB takes 61 days to award as compared to 75 days for simple source selections.

The process is still continuing to develop and improve. Different Agencies/organizations have different policies and procedures and have different levels of experience with the process. From my interviews experience seems to bring about the biggest process improvements and almost everyone I talked to said that at first they asked for too much detail and/or asked for information that did not discriminate between offerors.

Arguably the most important step in the process is the selection and development of evaluation factors. If the evaluation factors are clear enough and as simple as possible without, of course, hampering offeror's innovation and creativity the selection of the "Best Value" contractor will be much easier. If the evaluation factors are unclear and/or complex there is a greater risk of the evaluation getting bogged down and taking too much time, confusion amongst offerors and evaluators, and contractor protests.

The second most important step is the evaluation of the proposals itself. Even if the evaluation factors are complex and/or unclear if the evaluation team rates the proposals according to the evaluation factors and rate them consistently the conclusions and recommendations will stand in the face of a GAO protest or Federal Court proceedings. For this reason the Technical Evaluation Team should have some training so they understand the rules and guidelines they must follow and their importance in the source selection process.

I believe that the Source Selection process is the best available way to get the best value possible for Government construction projects. It allows for the use of non-price related factors that are not available with the IFB process. It helps to force contractors who want to continue to win contracts to care about their performance ratings on projects, helps reduce the adversarial

relationship between the Government and contractors and in the end results in an overall higher quality project that is much easier to administer.

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- Link to many other contract guides and regulations of the four armed services

APPENDIX A

Guidelines for a Source Selection Plan
from
AMC Pamphlet 715-3
Contracting for Best Value
A Best Practices Guide to Source Selections

Source Selection/Evaluation Plan
Section I. Summary Description A. Item/Service to be Acquired B. Proposed Contract Type *(Choose one)* __ FFP __ FP with Incentives __ Cost __ Cost with Incentives __ Hybrid (Explain) C. Source Selection Process (*Choose one*) __ Tradeoff __ Low Price Technically Acceptable __ Hybrid (explain) D. Special Evaluation Techniques (explain, if applicable) e.g. oral presentations, multi-step techniques
Section II. Source Selection Team **A. Members.** List the evaluation team members by name and functional area (including advisors, if applicable). **B. Team Member Certifications:** Verify/attach by reference certificates from each team member protecting unauthorized release of source selection or proprietary information.
Section III. Evaluation Factors and Subfactors **A. Proposal Evaluation Information.** State all factors, subfactors and their relative order of importance exactly as they will appear in the solicitation. If you elect to include desirable objectives or features you would be willing to pay extra for, include an explanation of how they will be evaluated and whether or not credit will be given for exceeding such desirables. **B. Proposal Submission Information.** State the instructions to offerors for preparing and

submitting proposals exactly as they will appear in the solicitation.

Section IV. Description of Evaluation Procedures

A. Rating System. Describe the evaluation technique (ratings and their definitions) that will be used to rate the proposals.

B. Evaluation Standards. Describe the standards or target levels you will use to measure how well a proposal addresses each evaluation factor and subfactor.

C. Procedures for Recording the Evaluation
e.g. Worksheet(s) for recording evaluator ratings with supporting narrative

D. Schedule. Identify the schedule for key source selection activities.

Section V. Rationale for the Evaluation Scheme

A. Factors and Subfactors. Explain how the selected factors and subfactors reflect the circumstances of your particular acquisition and the results of market research and other presolicitation exchanges with industry.

B. Weights. Explain how the relative importance of the factors and subfactors reflect the acquisition's primary objective. Explain why the most heavily weighted factors are the "drivers" of the source selection.

APPENDIX B
GAO CASE DECISIONS

BNUMBER: B-280853
DATE: November 24, 1998
TITLE: **Durocher** Dock & Dredge/Black & Veatch, A Joint Venture, B-280853, November 24, 1998
****

DOCUMENT FOR PUBLIC RELEASE
The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of:**Durocher** Dock & Dredge/Black & Veatch, A Joint Venture

File:B-280853

Date:November 24, 1998

Peter J. Ippolito, Esq., Hillyer & Irwin, for the protester.
Mark Christopher, Esq., Lis B. Young, Esq., and George N. Brezna, Esq., Naval Facilities Engineering Command, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that agency improperly evaluated protester's proposal is denied where the record shows that the agency evaluated the proposal in accordance with the evaluation factors announced in the solicitation and record reasonably supports protester's overall lower technical rating.

2. Disparities in evaluation ratings among technical evaluators do not establish that the evaluation process was flawed or not rationally based in view of the potential for disparate subjective judgments of different evaluators on the relative strengths and weaknesses of technical proposals.

3. Allegations by protester whose phase one proposal was reasonably ranked eighth, that agency improperly evaluated the first- and fourth-ranked proposals is dismissed where, even if protester's allegations were sustained, protester's proposal would not be eligible to proceed to phase two of the procurement; protester is not an interested party to pursue this aspect of the protest.

DECISION

Durocher Dock & Dredge/Black & Veatch, A Joint Venture protests the rejection of its proposal under request for proposals (RFP) No. N62467-98-R-0968, issued by the Department of the Navy to improve Wharf D, at the Naval Station in Mayport, Florida. The protester argues that the evaluation of its proposal was inconsistent with the

solicitation.

We deny the protest.

The Navy issued the RFP on May 20, 1998, as phase one of a two-phase procurement under the procedures set out at Federal Acquisition Regulation Subpart 36.3. RFP sec. 00202, amend. No. 0001, part I.1.2. The RFP is for the design and construction of a major waterfront improvement project at the Naval Station, Mayport, Florida. The solicitation advised offerors that the agency would evaluate proposals in two phases. Under phase one, at issue here, the RFP listed the following evaluation factors in descending order of importance: past performance, technical qualifications, management approach, and small business subcontracting effort. Id. Based upon the results of that evaluation, the Navy would then select a maximum of five of the "most highly-qualified offerors" to submit phase two proposals, which are to be evaluated based on technical considerations and price. Award is to be made to the offeror whose proposal is deemed to represent the best value to the government, considering price and technical factors. Id.

Twelve firms, including the protester, responded to the RFP by the time set on June 19, for receipt of phase one proposals. A technical evaluation board (TEB) evaluated proposals by assigning adjectival ratings (exceptional, acceptable, marginal, or unacceptable) under each evaluation factor, and an overall proposal rating. Based on the overall ratings, the TEB then ranked proposals from the most highly-rated (exceptional) to the lowest-rated (unacceptable) as follows:

[DELETED]	Exceptional
[DELETED]	Exceptional
Offeror A	Acceptable
[DELETED]	Acceptable
Offeror B	Acceptable
Offeror C	Marginal
Offeror D	Marginal
Durocher Dock & Dredge/Black & Veatch	Marginal
Offeror E	Marginal
Offeror F	Marginal
Offeror G	Marginal
Offeror H	Unacceptable

Agency Report at 2.

Based on the results of the phase one evaluation, the TEB found that the five highest-ranked proposals had demonstrated superior past performance and technical qualifications over the remaining seven

firms, and recommended to the source selection board (SSB) that the firms that submitted those proposals advance to phase two of the procurement. The SSB accepted that recommendation and by letters dated July 16, the agency informed all offerors whether they were selected to proceed to phase two. Following a debriefing by the Navy conducted on July 29, the protester filed an agency-level protest, which the Navy denied. This protest to our Office followed.

PROTESTER'S CONTENTIONS

The protester argues that the evaluation of its proposal was flawed and inconsistent with the RFP in several respects. For instance, **Durocher** argues that the TEB deviated from the evaluation scheme announced in the solicitation by emphasizing certain aspects of the work described in the solicitation (primarily electrical work), but that the Navy failed to notify offerors that this portion of the work would be considered more important in the evaluation. The protester also maintains that individual evaluators were not consistent in applying the RFP's evaluation criteria. **Durocher** further argues that the agency improperly evaluated the proposals submitted by two firms selected to proceed to phase two of the procurement.

DISCUSSION

Our Office will not engage in an independent evaluation of proposals nor make an independent determination of their relative merits. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD para. 114 at 9. Rather, we review the agency's evaluation only to ensure that it was reasonable and consistent with applicable statutes and regulations as well as with the terms of the solicitation. Sensis Corp., B-265790.2, Jan. 17, 1996, 96-1 CPD para. 77 at 6. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD para. 450 at 7. Based on our review of the record, including the TEB's narrative in support of its evaluation, we conclude that the factor and overall ratings assigned the protester's proposal are reasonably supported. Below we discuss a representative sample of the TEB's findings with respect to the protester's proposal in support of our conclusion.

Past Performance

The TEB assigned **Durocher**'s proposal a rating under this factor of "acceptable minus" (A-),[1] indicating the consensus of the TEB that the proposal was acceptable, but contained some weaknesses in this area. Under both subfactors in this area--design team and construction team--offerors were required to submit past performance narratives for up to three projects that demonstrated experience in performing work similar to that described in part I.1.3 of section 00202 of the RFP, the Specialized Project Requirements.[2] Offerors were also instructed to describe up to three partnering/teaming arrangements with design and construction teams.

The TEB identified several strengths in the protester's proposal under both subfactors in this area. For instance, the TEB found that all three project narratives **Durocher** submitted demonstrated work relevant to the Wharf D improvement project in that they all were major waterfront projects, and their scope included most or all of the work

elements required to accomplish this project. The TEB identified several weaknesses, however. For example, the TEB found that the projects **Durocher** submitted for the design and construction teams did not contain medium voltage electrical distribution work (as described in part I.1.3 of section 00202 of the RFP). The TEB also found that **Durocher**'s proposed design and construction teams demonstrated no past performance for steam systems, and had minimal experience with fueling systems. One evaluator specifically noted that the proposed design team's projects did not indicate any steam system design experience, and that it was unclear from the proposal whether the designers had performed any work related to fuel systems on any of the three projects **Durocher** described in its proposal. Technical Evaluation Worksheets. The TEB further found that none of the key personnel in **Durocher**'s proposed design team had worked on any of the partnering arrangements the firm described in its proposal. In our view, the TEB's consensus rating of A- under this factor reasonably reflected the evaluators' concerns that **Durocher**'s proposal had not demonstrated experience in performing work similar to that described in the Specialized Project Requirements section of the RFP.

Durocher argues that by downgrading its proposal for failing to show that the projects it submitted contained medium voltage electrical distribution work, the TEB gave this weakness greater significance than announced in the RFP. In this connection, **Durocher** argues that the TEB improperly emphasized the "voltage power distribution system" aspect of the work over other aspects, and that the Navy failed to inform offerors that this work element was significantly more important than any other aspect of construction or design. Protester's Comments, Oct. 2, 1998, at 2.

The protester's argument that the TEB emphasized one element (electrical distribution system) over other elements of the work is not supported by the record. As already stated, the record shows that the TEB considered **Durocher**'s proposal acceptable under this factor, but came to a consensus regarding the several weaknesses noted above. Since the TEB concluded that the projects **Durocher** submitted did not involve medium voltage electrical distribution work--one of the elements contained in part I.1.3 of section 00202 of the RFP--the TEB reasonably downgraded **Durocher**'s proposal slightly under this factor to a rating of A-. The fact that the TEB found that this element was missing did not mean that it was given more importance than others, and based on our review of the evaluation, we have no basis to object to the TEB's rating.

The protester points out that some individual evaluators rated **Durocher**'s proposal as exceptional in this area, while other evaluators downgraded its proposal for the medium voltage power distribution weakness. According to **Durocher**, this variation in individual ratings demonstrates that the members of the TEB were not uniform in applying the RFP's evaluation criteria.

It is not unusual, however, for individual evaluators to have disparate judgments regarding the relative strengths and weaknesses of a technical proposal. Syscon Servs., Inc., B-235647, Sept. 21, 1989, 89-2 CPD para. 258 at 5. Disparities in evaluator ratings do not establish that the evaluation process was flawed or otherwise not reasonable. U.S. Defense Sys., Inc., B-245006.2, Dec. 13, 1991, 91-2

CPD para. 541 at 4. Contrary to the protester's argument, the record shows that only one evaluator rated **Durocher**'s proposal exceptional while the other evaluators rated **Durocher**'s proposal either marginal or acceptable in this area, and that their narrative comments merely reflect the individual evaluators' subjective judgments regarding the relative strengths and weaknesses of the proposal in this area. In any case, notwithstanding the different individual ratings, the TEB reached a consensus in this area.

Technical Qualifications

The TEB assigned **Durocher**'s proposal a rating of marginal under this factor. Under the two subfactors evaluated in this area--design team and construction team--offerors were instructed to submit key personnel staffing that demonstrated experience in the elements included in the Specialized Project Requirements provision of the RFP. Offerors were also required to provide qualifications and staffing capability to support the project.

Under the design team subfactor, the TEB found that only one individual **Durocher** proposed as "key personnel" had participated in any of the projects **Durocher** described in its proposal (and even that individual had participated in only one project described in the proposal), and identified this as a weakness in the proposal. The TEB further found that the proposed key personnel demonstrated no waterfront electrical distribution, steam, or fuel system experience and considered this a weakness in the proposal. Under the construction team subfactor, the TEB found that the proposed key personnel demonstrated no waterfront electrical distribution experience, and that the waterfront experiences listed for key structural personnel were minimal in scope. The protester does not rebut any of the TEB's findings in this regard.

In its proposal, **Durocher** identified the firm of [DELETED] as a mechanical team member and [DELETED] as the electrical installation team member. The TEB noted, however, that the protester did not include any personnel data for [DELETED], and found that the proposal demonstrated no specific diesel fuel or steam work experience by construction project managers, superintendents, or quality assurance personnel.

In its comments on the agency report, **Durocher** argues that both firms it identified in its proposal as (mechanical and electrical) team members have previously worked on Navy projects, including Mayport. According to the protester, therefore, the Navy should have been familiar with these firms based on their performance on those projects.

Durocher's reliance on the previous projects performed by its proposed team members without regard to the specific information required by the RFP is misplaced. A procuring agency's technical evaluation is dependent upon the information furnished in the offeror's proposal. Computerized Project Management Plus, B-247063, Apr. 28, 1992, 92-1 CPD para. 401 at 3. An agency is not required to overlook a flawed proposal on the basis of the offeror's prior performance; on the contrary, all offerors are expected to demonstrate their capability in their proposals. Pedus Bldg. Servs., Inc., B-257271.3 et al., Mar. 8,

1995, 95-1 CPD para. 135 at 4. Consequently, the agency reasonably relied on **Durocher**'s proposal in determining the identified weaknesses in its qualifications and staffing capability to support the project.[3] Since **Durocher** has not shown that the evaluated weaknesses are unfounded based on the information contained in its proposal, we have no basis to object to the evaluation.[4]

Based on our review of the evaluation record, including the protester's proposal and the TEB's individual worksheets, we think that the agency reasonably concluded that **Durocher**'s proposal omitted material information regarding its past performance and failed to demonstrate its technical qualifications as required by the RFP.[5] Under these circumstances, we have no basis to object to the TEB's overall rating of marginal of the protester's proposal.

The protester also argues that the agency improperly evaluated the proposals submitted by two firms selected to proceed to phase two of the procurement. In this regard, **Durocher** maintains that [DELETED] "has been in business for only five months and has yet to successfully complete a project." Protester's July 29, 1998 letter to the Navy at 1-2. **Durocher** reiterates this argument in its comments on the agency report, maintaining that the record "reveals [DELETED] was formed in October of 1997." Protester's Comments, Oct. 2, 1998, at 4.

In addition, **Durocher** asserts that [DELETED] "has lost virtually all of its management personnel that . . . were responsible for the construction and management of all projects listed in their performance record." Letter from Protester to the Navy at 2 (July 29, 1998). According to **Durocher**, "it is obvious that a number of [DELETED] key employees left [DELETED] and became employees of the newly formed [DELETED] contractor corporation in 1997." Protester's Comments, Oct. 2, 1998, at 5. The protester thus questions the higher ratings assigned the proposals submitted by [DELETED] and [DELETED].

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. sec. 3551-3556 (West Supp. 1998), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. sec. 21.0(a) (1998). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., B-228470, Feb. 16, 1988, 88-1 CPD para. 151 at 2-3. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD para. 7 at 1.

Based on their overall ratings, [DELETED] proposal (exceptional) was ranked first, [DELETED] proposal (acceptable) was ranked fourth, while **Durocher**'s proposal (marginal) was ranked eighth overall. Since we conclude that the evaluation of **Durocher**'s proposal was reasonable, even assuming that [DELETED] and [DELETED] proposals were downgraded so as to be eliminated from phase one, **Durocher**'s proposal's relative ranking would rise only from eighth to sixth place. Since the RFP stated that a maximum of five of the "most highly qualified offerors"

would advance to phase two, RFP sec. 00202, amendment No. 0001, part I.1.2., **Durocher** would not be eligible to proceed to phase two of the competition (instead, the higher-rated proposals submitted by offerors C and D would now be among the most highly-rated proposals).

Where, as here, there are intervening offerors with a greater interest in the procurement than the protester, we generally consider the protester's interest to be too remote to qualify the protester as an interested party. Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD para. 463 at 4. Since nothing in **Durocher**'s protest would alter the ratings of the intervening offerors (Offerors C and D), **Durocher** would not be eligible to proceed to phase two of the competition even if its protest allegations were sustained; accordingly, **Durocher** is not an interested party to challenge the evaluation of the [DELETED] and [DELETED] proposals.

The protest is denied.

Comptroller General
of the United States

1. The TEB added a plus, a minus, or no designation to the factor ratings based on the strengths and weaknesses of each factor. To assist in determining proposal rankings, the TEB also added a plus, a minus, or no designation to the overall proposal ratings.

2. Part I.1.3 of section 00202 of the RFP describes the project, including the main design and construction elements such as dredging, structural, mechanical, electrical, and civil utilities.

3. We recognize that in some cases, where an offeror's proposal refers to information regarding its past performance and the information is personally known to the evaluators, that information must be considered in the evaluation. See, e.g., International Bus. Sys., Inc., B-275554, March 3, 1997, 97-1 CPD para. 114 at 5 ("some information is simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider, the information"). That is not the case here. On the contrary, **Durocher**'s proposal merely named its two proposed electrical and mechanical team members, and generally stated that their selection was based on their "knowledge of the Naval Station Mayport, and experience and familiarity with government contracting." **Durocher**'s Proposal at 13. The proposal did not identify any Navy contracts at the Mayport facility with which the firms were involved and did not describe the services those firms rendered in connection with those contracts; nor does the proposal identify the specific activity for which the work was performed.

4. Regarding the evaluation of [DELETED] proposal, one of the firms which was retained in the competition, **Durocher** argues that the TEB improperly considered as a strength information regarding a proposed electrical and mechanical subcontractor that was apparently not submitted in that firm's proposal. In this regard, the TEB found as one of nine strengths under the Past Performance factor that, "[a]lthough not submitted, . . . [the] (elec. & mech. sub.) has received several excellent commendations from SOUTHDIV for relevant work." Technical Evaluation Board Report at 13. Even assuming that

the TEB should not have considered that information, given the other strengths noted and the superior factor ratings assigned the proposal in other areas, there is no reason to conclude that the "exceptional" rating of [DELETED] proposal, or the overall proposal rating of "exceptional minus," would change.

5. The TEB assigned **Durocher**'s proposal a rating of "marginal plus" under the third evaluation factor, management approach. Offerors were required to submit an organizational chart for design and construction teams demonstrating contractual arrangements and lines of authority between key personnel. RFP, amend. No. 0001, part I.1.5, factor C. The TEB found that while the organizational charts **Durocher** included in its proposal listed all design and construction key personnel, the charts and matrices presented were unclear. Also, the TEB concluded that the narrative included with the charts did not demonstrate an adequate understanding of the design-build process. Based on our review of the charts, the accompanying explanation, and the TEB's narrative in support of its evaluation, and since **Durocher** has not rebutted any of the evaluators' findings, we think the TEB's rating in this area is reasonable.

BNUMBER: **B-274689**
DATE: December 26, 1996
TITLE: **Tidewater Homes** Realty, **Inc.**

****

Matter of:**Tidewater Homes** Realty, **Inc.**

File: **B-274689**

Date:December 26, 1996

Freida V. Rapp and Kenneth S. Rapp for the protester.
Virginia Kelly Stevens, Esq., and Jane D. Atkinson, Department of Housing and Urban Development, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's best value award selection is not reasonably supported where the record reflects that the selection of the awardee was based on an unequal evaluation of the protester's and awardee's proposals.

2. Agency improperly waived definitive responsibility criterion which required the awardee possess a Virginia Real Estate Broker License at the time of award, where the agency determined the awardee to be responsible, despite not possessing the license.

DECISION

Tidewater Homes Realty, **Inc.** protests the award of a contract to CitiWest under request for proposals (RFP) No. H03R95062400000, a total small business set-aside, issued by the United States Department

of Housing and Urban Development (HUD), for real estate asset manager (REAM) services for single-family properties owned by HUD or in its custody in Virginia Beach, Virginia area under a firm, fixed-price, indefinite quantity, contract for a base year with 4 option years.

We sustain the protest.

The RFP, issued as a small business set-aside on June 1, 1995, provided for a best value award with the technical evaluation being worth more than cost/price. The RFP listed the following technical evaluation factors and corresponding values:

> 1. Demonstrated experience in the management of single-family properties similar to and in a like area as those covered by this solicitation. [25 points]
>
> 2. Demonstrated experience in developing lists of needed repairs, such as is required by HUD's Minimum Property Standards (MPS), and estimating the cost of repairs. [25 points].
>
> 3. Demonstrated experience in soliciting repair bids, coordination and overseeing repair work, and inspecting for satisfactory work completion. [15 points]
>
> 4. Demonstrated experience in managing a rental program, including establishing fair market rentals and collections from present and former tenants, for single-family properties. [10 points]
>
> 5. Understanding of HUD objectives and the required tasks as specified in the solicitation. [10 points]
>
> 6. Evidence of adequate office--staffed with appropriately trained staff and equipped appropriately (or the ability to establish such), reasonably located so as to provide convenient service to HUD and its clients in the area to be served, and to carry out all duties specified in the solicitation. [15 points]

As part of their technical proposal, offerors were required to submit a completed Form 477, List of Repairs (included in RFP), for a specified property in Virginia Beach. Offerors were cautioned that:

> "Proposals submitted without this form will not be disqualified from competing for the award, but omission of the form may adversely affect the offeror's technical points achieved in [factor 2]."

In addition the RFP required:

> "The contractor must supply with its Technical Proposal evidence of its Virginia Real Estate Broker License--in the contractor's name as it appears on the offer--to be determined responsible and eligible for award." [Emphasis in original.]

At the pre-proposal conference, a HUD official stated that if evidence of the foregoing license were not included in the proposal, "evidence of [the offeror's] ability to provide the license at award must be

provided." The RFP expressly stated that proposals would be initially screened to ensure that they contained a Form 477 for the specified property and evidence of a Virginia Real Estate Broker License.

HUD received 12 initial proposals by November 13. **Tidewater**, whose principals were a manager and former employee of the local incumbent contractor performing these services, and CitiWest, from Tucson, Arizona, both submitted proposals. A technical evaluation panel (TEP), comprised of members from the regional contracting office in Philadelphia, Pennsylvania evaluated proposals. Five proposals, including those of **Tidewater** and CitiWest, were included in the competitive range. Three of the proposals, including CitiWest's, with a score of 91 points, were found technically acceptable and two, including **Tidewater**'s, with a score of 37 points, were found capable of being made acceptable.

By letter of June 21, 1996, HUD conducted discussions with the competitive range offerors, during which it advised **Tidewater** of the weaknesses and/or deficiencies in its proposal. HUD received best and final offers (BAFO) by July 9. CitiWest's BAFO at an evaluated unit price of $1,317 received the same technical score of 91 points. **Tidewater**'s BAFO at an evaluated unit price of $1,233 received a technical score of 47 points.

The TEP rated **Tidewater**'s BAFO relatively low under five of the six evaluation factors, finding that **Tidewater**'s proposal lacked pertinent detail in many respects. In contrast, CitiWest's proposal received high point scores under all of the factors and was determined to be reasonably priced. HUD determined that CitiWest's technically superior proposal was worth the additional cost because it would likely have fewer performance problems, resulting in less costs to the government, and made award to that firm on August 23. This protest followed.

Tidewater protests that its proposal contained the required pertinent details and was misevaluated. **Tidewater** claims that the Philadelphia-based TEP was biased against **Tidewater**, as well as other locally based companies, and that HUD may have harbored resentment against **Tidewater** due to actions that **Tidewater** undertook in a prior procurement. **Tidewater** notes that it submitted essentially the same proposals in response to HUD procurements for similar REAM services that a HUD Richmond-based TEP rated very favorably. **Tidewater** also claims that CitiWest did not have the Virginia Real Estate Broker License in its name at the time of award as required by the RFP.

The evaluation of proposals is a matter within the discretion of the contracting agency. Our Office will only question the agency's evaluation where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. SC&A, **Inc.**, **B**-270160.2, Apr. 10, 1996, 96-1 CPD para. 197. The record must reasonably support the evaluation of the proposals, Intown Properties, **Inc.**, **B**-262236.2; **B**-262237.2, Jan. 18, 1996, 96-1 CPD para. 89, and it is fundamental that the contracting agency must treat all offerors equally; it must even-handedly evaluate offers against common requirements and evaluation criteria. Sci-Tec Gauging, **Inc.**; Sarasota Measurements & Controls, **Inc.**, **B**-252406; **B**-252406.2, June 25, 1993, 93-1 CPD 494; Secure Servs. Technology, **Inc.**, **B**-238059, Apr. 25, 1990, 90-1 CPD para.

421. As illustrated by the examples below, our review of the record reveals that CitiWest's and **Tidewater**'s proposal were unequally evaluated under the RFP's evaluation factors.[1]

For example, under Factor 2, **Tidewater**'s proposal received 6 points, while CitiWest's proposal received 24 points. **Tidewater**'s low score was attributed to an asserted lack of detail and clarity contained in the submitted Form 477 on the Virginia Beach property specified in the RFP and questions regarding **Tidewater**'s ability to prepare cost estimates. These evaluated problems were brought to **Tidewater**'s attention during discussions. In its BAFO, **Tidewater** basically explained, with some further elaboration, why it believed the submitted Form 477 and repair list satisfied the agency's requirements as stated in Factor 2[2] and its method for preparing cost estimates. The TEP rated **Tidewater**'s BAFO with the same score because the Form 477 still did not contain sufficient detail and because **Tidewater**'s initial response regarding the preparation of cost estimates caused the TEP to question the validity and sincerity of **Tidewater**'s response in its BAFO.

Our review of **Tidewater**'s BAFO indicates that the information contained in its Form 477 and its overall response to this factor contained much the same substantive detail as CitiWest's proposal. Based on our review of the two proposals, we cannot identify what specific details are missing from, or unclear in, **Tidewater**'s Form 477 with attachments. HUD does not explain what details are missing or what is unclear; nor does it comment upon the accuracy of the needed repairs on the specified property as identified by **Tidewater**.

On the other hand, while CitiWest's technical proposal seemed to address the same categories of information for repairing a specific property as required in a Form 477, no Form 477 was included in its proposal, despite the RFP's admonitions, and the property which was assessed by CitiWest under this factor was one that CitiWest was responsible for in Camden, New Jersey (under a REAM contract apparently administered by the Philadelphia HUD office), rather than the Virginia Beach property identified in the RFP.[3] We do not believe the evaluators could have reasonably rated CitiWest's proposal with close to the maximum score and much more favorably than **Tidewater**'s proposal for this factor, given CitiWest's failure to provide a Form 477 for the specified property as was requested in the RFP.[4]

Moreover, we find questionable HUD's explanation concerning its failure to credit **Tidewater** under Factor 2 for its apparently appropriate BAFO response as to who will prepare cost estimates for this work, since agencies are generally required to credit offerors for explanations in response to discussion questions. Intown Properties, **Inc.**, supra. Under the circumstances, the record suggests disparate evaluation of the two proposals under this factor.

Another example of unequal treatment involves the evaluation of Factor 6. The TEP awarded **Tidewater**'s proposal a final score of 7 out of 15 points for this factor and CitiWest's proposal 12 points. The agency downgraded **Tidewater**'s proposal because it was allegedly vague as to location of the office space and the division of responsibilities among staff members. Here again, our review indicates that

Tidewater's BAFO and overall technical response to this factor was specific as to prospective locations, staff, and equipment. In contrast, CitiWest's proposal did not identify any specific location or staff in its proposal, but stated only how it would do so if awarded the contract.

Finally, **Tidewater** argues, and our review confirms, that CitiWest did not provide a Virginia Real Estate Broker License with its proposal. While CitiWest proposed to promptly obtain the license after award, **Tidewater** notes that its investigation reveals that CitiWest has not obtained the license and HUD has not disputed this assertion. In any event, the requirement that the offeror furnish a specific license to be eligible for award was a definitive responsibility criterion that had to be satisfied as prerequisite for award.[5] RSI Realty Servs. **Inc.**, **B**-262238, Dec. 12, 1995, 95-2 CPD para. 252 (finding the same requirement imposed in a REAM service procurement conducted by the HUD Philadelphia office to be a definitive responsibility criterion which was waived for CitiWest). By finding CitiWest responsible and making award to that firm, the agency effectively waived the requirement for possession of the license prior to award.[6] Where an agency waives such a requirement, it is required to amend the RFP; an agency's failure to amend represents unequal treatment of the offerors. See Topley Realty Co., **Inc.**, 65 Comp. Gen. 510 (1986), 86-1 CPD para. 398.

In sum, as illustrated by the foregoing examples, we find that **Tidewater**'s proposal was evaluated unequally vis-a-vis CitiWest's proposal. Thus, we cannot conclude that the award to CitiWest is reasonably supported, and we sustain the protest on this basis. Intown Properties, **Inc.**, supra; Sci-Tec Gauging, **Inc.**; Sarasota Measurements & Controls, **Inc.**, supra; Secure Servs. Tech., **Inc.**, supra.

We recommend that the agency determine whether the requirement that an offeror possess a Virginia Real Estate Broker License in order to receive award exceeded the agency's requirements; if it does, the agency should amend the RFP, obtain and evaluate new proposals, and make award in accordance with the revised RFP. If CitiWest is not the successful offeror, its contract should be terminated. Alternatively, if the license remains a requirement, we recommend that the agency reject CitiWest's proposal if CitiWest does not possess the requisite license (subject to Small Business Administration review under certificate of competency procedures, see FAR subpart 19.6) and terminate the contract, reevaluate the remaining competitive range proposals in accordance with the RFP, and make a new award selection. In any event, in light of the evaluation discrepancies noted, we recommend that a new TEP be appointed to evaluate the new proposals to assure equal evaluation. See J.M. Cashman, **Inc.**, **B**-233773, Apr. 14, 1989, 89-1 CPD para. 380. We further recommend that **Tidewater** be reimbursed the reasonable costs of filing and pursuing its protest under section 21.8(d)(1) of our Bid Protest Regulations, 61 Fed. Reg. 39043 (1996)(to be codified at 4 C.F.R. sec. 21.8(d)(1)). The protester should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision pursuant to section 21.8(f)(1) of our Regulations, 61 Fed. Reg. 39043 (to be codified at 4 C.F.R. sec. 21.8(f)(1)).

The protest is sustained.

Comptroller General
of the United States

1. Our discussion of the respective contents and evaluation of CitiWest's and **Tidewater**'s proposals is necessarily general because we recommend a reevaluation of the proposals and because no protective order was issued, inasmuch as the protester did not employ legal counsel.

2. **Tidewater**'s BAFO noted the limited size on the one-page Form 477 for notations.

3. The agency incorrectly states in its report in response to the protest that CitiWest's proposal contained a Form 477 "for the property specifically identified in the RFP."

4. It appears that the Camden property was in need of much more extensive repairs than the specified Virginia Beach property, which permitted CitiWest to provide a more extensive description and perhaps receive more credit under this factor.

5. A definitive responsibility criterion is a specific and objective standard established by an agency to measure an offeror's ability to perform the contract. Federal Acquisition Regulation (FAR) sec. 9-104-2. Such special standards put firms on notice that the class of prospective contractors is limited to those meeting qualitative or quantitative criteria deemed necessary for adequate performance, e.g., unusual expertise, specialized facilities, or particular licenses. Tucson Mobilphone, **Inc.**, **B**-258408.3, June 5, 1995, 95-1 CPD para. 267.

6. The agency now states that the requirement that the license be obtained prior to award overstated its minimum needs and that the requirement as stated was "sometimes confusing to offerors." The protester notes that this requirement may well have caused nonlocal firms not to compete and required other offerors to undergo the expense of obtaining the proper license prior to award.

Decision
Matter of: Lloyd H. Kessler, Inc.
File: B-284693
Date: May 24, 2000

Jan D. Sokol, Esq., Stewart Sokol & Gray, for the protester.
James L. Weiner, Esq., and Alton E. Woods, Esq., Department of the Interior, for the agency.
Henry J. Gorczycki, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST
Agency is required to disclose in the solicitation a subfactor to evaluate a particular type of experience under the experience factor where the subfactor constitutes 40 percent of the technical evaluation.

DECISION

Lloyd H. Kessler, Inc. protests the award of a contract to John L. Jersey & Son, Inc. under request for proposals (RFP) No. FWS1-00-P004(KH), issued by the Department of the Interior, United States Fish and Wildlife Service (USFWS), for river dike renovation/rehabilitation at the Ridgefield National Wildlife Refuge, Washington. Kessler protests that the agency did not adhere to the stated RFP evaluation factors and improperly used unstated significant subfactors in the evaluation, and improperly evaluated Kessler's past performance.

We sustain the protest.

The RFP, issued October 29, 1999, contemplated the award of a fixed-price construction contract. Contract performance cannot begin "until the eagle leaves its nest" in August 2000. RFP amend. 0002, at 1, 3. The RFP stated a best value evaluation plan under which "price and capability score are of equal importance." RFP at 53. The capability score was said to be based on 100 possible points divided between (1) experience of firm (30 points) and (2) past performance of firm (70 points). RFP at 45.

The RFP's instructions for the preparation of responses to the past performance and experience factors stated that "OFFERORS SHOULD PROVIDE ONLY THE INFORMATION" requested by the RFP, that is, specified information about current contracts or contracts completed in the previous 2 years, including a brief description of the work performed and a point of contact. RFP at 46. The RFP stated that the agency would request performance information from the contract references to evaluate quality of performance, and may contact, and evaluate information received from, references other than those identified by offerors. RFP at 47. The RFP specified five criteria that would be considered in evaluating past performance. RFP at 45-46. The RFP stated no criteria that would be considered in evaluating experience, but noted that this evaluation would be based on existing and prior contracts. RFP at 45-47.

The agency received 17 proposals by the December 14 closing date. Kessler's proposal offered the lowest price of $425,880 while Jersey's proposed price was $487,221. Under the agency's evaluation, Kessler's proposal received a score of 70 points while Jersey's proposal was one of the highest-rated proposals with a score of 90 points. Agency Report at 1; Tab 8, Evaluation Results.

The agency's actual evaluation differed from that stated in the RFP in that the relative weights for experience and past performance were reversed and experience was assigned 70 points and past performance was assigned 30 points. Under this evaluation, the experience scores for Kessler and Jersey were 55 and 65 points, respectively, and the past performance scores were 15 and 25 points, respectively. [1] Agency Report at 1, Tab 8, Evaluation Results. The scores for experience were based on the following three criteria and relative weights not stated in the RFP: (1) bioengineered slope protection, 40 of the possible 70 points; (2) wetland excavation, 15 points; and (3) rip-rap construction, 15 points. Agency Report, Tab 7, Evaluation and Award Determination Summary, at 1. Kessler's proposal received 25 of the possible 40 points for the bioengineered slope protection criterion, and received all of the combined 30 points available under the wetlands and rip-rap criteria. Supplemental Contracting Officer's Statement (Apr. 10, 2000) at 5. The agency evaluation stated that Kessler "apparently has average experience in bioengineering (2.5 projects as the engineers can find in the experience information given) slope protection but has good wetland excavation and rip-rap placement experience." Agency Report, Tab 7, Evaluation and Award Determination, at 2.

Under past performance, Kessler's proposal provided the requested information on 16 contracts completed in the past 2 years. Agency Report, Tab 3, Kessler's Proposal, at 16-18. The agency based its past performance evaluation of Kessler on one of these contracts--a previous contract for dike repair with this agency--and two other contracts not identified in Kessler's proposal. Agency Report, Tab 5, Performance Evaluations. The agency evaluation identified adverse comments concerning Kessler's performance that resulted in a below-average score; however, the score was increased to an average score of 15 out of 30 points because the agency did not give Kessler the opportunity to respond to the reports of adverse past performance. Agency Report, Tab 7, Evaluation and Award Determination, at 3.

The agency's cost/technical tradeoff analysis concluded that the concerns arising from reports of adverse past performance for Kessler were not worth the cost savings of Kessler's lower price. Id. The agency determined that Jersey's proposal, as the lowest priced of the most highly rated proposals, represented the best value. Id. at 4, 6.

On February 4, 2000, the agency awarded the contract to Jersey. This protest followed. The agency suspended performance of Jersey's contract pending resolution of the protest.

Kessler protests the agency's failure to adhere to the RFP's stated evaluation weights and the use of unstated experience subfactors in the evaluation.

It is fundamental that offerors must be advised of the bases upon which their proposals will be evaluated. H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203 at 4. In particular, contracting agencies are required by statute and regulation to clearly set forth in the solicitation all evaluation factors and significant subfactors that will affect contract award and their relative importance. 41 U.S.C. § 253a(b)(1) (1994); Federal Acquisition Regulation §

15.304(d). An agency may not give importance to specific factors, subfactors, or criteria beyond that which would reasonably be expected by offerors. Kumasi Ltd./Kukawa Ltd. et al., B-247975.7 et al., May 3, 1993, 93-1 CPD ¶ 352 at 6; Republic Realty Servs., Inc., B-242629, May 7, 1991, 91-1 CPD ¶ 446 at 5. Contracting officials do not have the discretion to announce in the solicitation that they will use one evaluation plan and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Kumasi Ltd./Kukawa Ltd., et al., supra at 7. A solicitation that does not set forth a common basis for evaluating offers, which ensures that all firms are on notice of the factors for award and can compete on an equal basis, is materially deficient. The Faxon Co., B-227835.3, B-227835.5, Nov. 2, 1987, 87-2 CPD ¶ 425 at 4.

Here, contrary to the terms of the RFP, the agency considered experience to be the most important technical factor comprising over two-thirds of the capability score. The agency also states that the single subfactor, bioengineered slope protection, is the key consideration in the overall evaluation of experience, "*as it will make or break this project*," Agency Report, Tab 7, Evaluation and Award Determination Summary, at 1 (italics in original). Consistent with this statement, bioengineered slope protection, though the term does not appear anywhere in the RFP, is the single-most important technical criterion, carrying more weight in the unstated evaluation plan--40 out of 100 overall capability points--than past performance, which was stated to be the most important evaluation factor, or the weight assigned in the solicitation to the entire experience factor. This is a significant evaluation subfactor that, by statute and regulation, must be clearly stated in the RFP along with its relative importance, even assuming it was considered reasonably related to the general experience factor stated in the RFP. See Kumasi Ltd./Kukawa Ltd., et al., supra, at 6 (subfactor four times more important than reasonably apparent from the RFP must be disclosed in RFP); Devres, Inc., B-224017, Dec. 8, 1986, 86-2 CPD ¶ 652 at 3 (subfactor worth more than any other technical factor is "significant"); cf. Bulova Techs., LLC, B-281384, B-281384.2, Feb. 3, 1999, 99-1 CPD ¶ 99, at 7-8 (agencies can properly take into consideration specific, albeit not expressly identified, experience in making qualitative distinctions between competing proposals, so long as the specific experience is logically encompassed by or related to the RFP's requirements and stated basis for evaluation).

The RFP did not otherwise indicate that "bioengineered slope protection" had the overwhelming significance given in the evaluation. As noted, this term is not mentioned anywhere in the RFP. The term appears in the Evaluation and Award Determination, which identifies this requirement as contract line item number (CLIN) 11 in the RFP, which is "Furnishing and Placing Fabric Slope Protection." [2] Agency Report, Tab 7, Evaluation and Award Evaluation, at 1; see RFP Bid Schedule at 1. Neither the estimated quantity for this CLIN and its associated price (as judged from the protester's and awardee's proposals), nor the description of this requirement in the statement of work indicates a level of significance approaching the weight accorded to bioengineered slope protection in the agency's evaluation. RFP at C-108-16; Agency Report, Tabs 3 and 4, Proposals, Bid Schedule at 1.

The agency concedes that the actual relative weights of the evaluation factors were not consistent with that stated in the RFP, but asserts that Kessler was not prejudiced by this evaluation because Kessler's relative ranking would not improve if the weights announced in the RFP had been used. The agency's arguments do not consider the fact the proposals were prepared without offerors knowing either the overwhelming significance of experience generally, or bioengineered slope protection specifically, in the evaluation, such that it cannot be said that offerors had a reasonable opportunity to compete on this basis.

In this regard, Kessler prepared its proposal under the stated RFP evaluation plan whereby experience was the least important technical factor. As instructed by the RFP, Kessler provided only a brief description of the work performed under its prior contracts, and did not specifically identify any work involving bioengineered slope protection. Agency Report, Tab 3, Kessler's Proposal, at 16-18. Even so, the agency was able to determine that Kessler "apparently has average experience" under this subfactor. Agency Report, Tab 7, Evaluation and Award Determination, at 2. Kessler states that, had it known when preparing its proposal that experience would be worth 70 percent of the capability score, and that bioengineered slope protection was of prime importance in the evaluation, it would have placed greater emphasis on experience in the contents of its proposal, and specifically would have emphasized its experience providing bioengineered slope protection. Protester's Comments at 9-10. Although the agency evaluation determined that Kessler performed bioengineered slope protection on "2.5 projects as the engineers can find in the experience information given", [3] Agency Report, Tab 7, Evaluation and Award Determination Summary, at 2, Kessler states that all of its projects involved this type of work and it would have provided this and other experience information, had the agency stated that experience and this subfactor were as significant as they were evaluated. Protester's Supplemental Comments at 11.

Given that Kessler has relevant experience, it is reasonable to conclude that Kessler's score could increase considerably if the firm is permitted to submit a proposal with the knowledge of the actual importance of experience

generally, and of bioengineered slope protection specifically. [4] Because the agency used an evaluation plan not apparent from the RFP, the offerors, including Kessler, did not have the opportunity to compete on a common basis, so there is at least a reasonable possibility that Kessler's lowest-priced proposal will be selected for award if the actual evaluation factors and subfactors are disclosed. [5] We therefore find that Kessler was prejudiced.
We recommend that the agency amend the solicitation to state the agency's proposal requirements and evaluation plan, request and evaluate revised proposals, and make a new source selection decision. [6] If a proposal other than Jersey's is selected for award, the agency should terminate the contract previously awarded to that firm. We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2000). The
protester should submit its claim for costs, detailing and certifying the time expended and cost incurred, with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).
The protest is sustained.
Comptroller General
of the United States

Notes
1. The agency also assigned risk ratings based on the offerors' present and past performance. Kessler's rating was high risk and Jersey's rating was low risk.
Agency Report, Tab 7, Evaluation and Award Determination, at 2-3.
2. In its Supplemental Report, the agency references other RFP work items not included in CLIN 11 that constitute "bioengineering." Supplemental Report at 2. However, the award document states that CLIN 11 was the "more weighted item" in the evaluation because it encompasses "bioengineered slope protection." Agency Report, Tab 7, Evaluation and Award Determination, at 1.
3. As stated, Kessler's proposal did not identify bioengineered slope protection work. Neither the evaluation record nor the agency's responses to this protest demonstrates how the agency made its determination in this regard as to Kessler's proposal or any other proposal. We also question what .5 of a project means for purposes of this evaluation and how that could be determined. No other offeror was noted to have experience on fractions of a project.
4. It is possible that, under such circumstances, Kessler's capability score could increase from 70 to 85 points from the evaluation of bioengineered slope protection alone, which would place its lowest-priced proposal extremely close to the highest-rated proposals, including Jersey's, thus changing the underlying basis upon which the agency's cost/technical tradeoff determination and source selection decision was made.
5. We note that, even beyond the agency's failure to disclose the actual evaluation plan in the RFP, the documentation supporting the evaluation is minimal, such that it would be difficult to determine the reasonableness of the evaluation, even if the RFP were not defective. The little documentation that does exist indicates that the agency unequally evaluated offerors under the bioengineered slope protection subfactor, in that, although the experience under the other subfactors for Kessler and another offeror were evaluated as good, that offeror had "minimal" bioengineered slope protection experience compared to Kessler's "average" experience, but nevertheless received a considerably higher experience score than Kessler. Agency Report, Tab 7, Evaluation and Award Determination Summary, at 2, 5.
6. Kessler also contests its past performance evaluation. While we do not decide whether the past performance evaluation was improper, the record reflects some problems that should be appropriately addressed when the agency reopens discussions. Specifically, the record reflects that the agency contacted only 1 of the 16 references listed in Kessler's proposal (a USFWS contract), and while the agency alleges that the other references declined to comment on Kessler's performance, there is no documentation supporting this statement, and Kessler has submitted evidence that no such contacts were made. The other two references considered by the agency were for contracts apparently completed more than 3 years before the evaluation, although the RFP requested information only on contracts performed in the last 2 years. In addition, Kessler has vigorously disputed the accuracy of the negative comments regarding its past performance, and the agency states that Kessler was not given the opportunity to respond to these negative comments. Since such matters should be raised, where, as here, discussions are to be conducted, the agency can now afford Kessler an opportunity to respond to any negative comments regarding its past performance.

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